

MEMORANDUM

TO: Drafting Committee for Model Act on Appointment and Powers of Real Estate Receivers

FROM: Thomas S. Hemmendinger, Chair
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DATE: April 2, 2013

RE: Overview of Project; Issues for Discussion at First Meeting

This memorandum provides background information about the project to draft a Model Act on Appointment and Powers of Real Estate Receivers. The memorandum identifies and provides background information regarding many of the major issues that the Drafting Committee will need to address.

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BACKGROUND

Receivership is a fundamental equitable remedy sometimes sought by a mortgage lender while enforcing a mortgage loan that is in default. Typically, a commercial real estate mortgage or deed of trust explicitly provides that upon default, the mortgagee may seek the appointment of a receiver from a court with jurisdiction over the mortgaged premises; frequently, the mortgage or deed of trust purports to provide mortgagor consent for such appointment. If appointed, the receiver takes possession of the mortgaged premises and, pursuant to the court's order of appointment, preserves and manages the mortgaged property pending the completion of a foreclosure sale.

Traditionally, mortgage lenders have sought the appointment of a receiver pending foreclosure for one or more of several basic reasons:

- The mortgaged property is located in a state where the foreclosure process takes a substantial period of time (e.g., six months or longer) and during such period, the mortgaged premises will generate rents that have been assigned to the mortgagee as security for the loan and could be applied to reduce the mortgage debt. Obtaining the appointment of a receiver allows the mortgagee to prevent the mortgagor from diverting rents to other creditors or insiders of the mortgagor pending a foreclosure sale.
- The property is subject to waste, deterioration, or some other immediate physical harm that threatens to reduce the value of the mortgaged property and thus threatens the mortgagee's security.

- The property may have environmental contamination, and the mortgagee does not want to be in the chain of title or rely solely on statutory “secured creditor exemptions” from environmental laws.
- The project includes personal property (movables and/or intangible property), and the mortgagee wants to foreclose judicially to avoid claims that it failed to liquidate its collateral in a commercially reasonable manner.

Unfortunately, there is little comprehensive statutory guidance regarding the appointment and powers of receivers for mortgaged real estate. Receivers are appointed pursuant to a court’s general equitable power to appoint a receiver; only a few states provide statutes that address the appointment and powers of real estate receivers in meaningful detail. Although the Uniform Assignment of Rents Act (promulgated in 2005 and adopted in Nevada, Utah and New Mexico) explicitly addresses the evidentiary showing necessary to obtain the appointment of a receiver, UARA has as yet obtained only narrow enactment, so there remains state-to-state variation regarding the standards for appointment of a receiver. Furthermore, nothing in UARA explicitly addresses the scope of the powers that a receiver of real estate may exercise prior to foreclosure. To some extent, the scope of a receiver’s powers can be clarified by the court’s order appointing the receiver. Nevertheless, it is sometimes the case that after taking possession, a receiver may be faced with the need to take actions in managing the premises that may not have been specifically addressed in the receivership order.

Furthermore, the uncertainty surrounding the appointment and power of receivers is in some ways exacerbated by distinctions in the types of receiverships courts have authorized. In some circumstances, courts may appoint a **general receiver**, where the receiver is authorized to take possession and control of all of the assets of the defendant (most frequently in the context of a defendant that is insolvent or being dissolved). In a general receivership, the overarching goal of the proceeding is typically the liquidation of the defendant’s assets and distribution to creditors entitled to payment. By contrast, courts sometimes may appoint a **special receiver**, where the court authorizes the receiver to take possession and control of a specific asset or set of assets. The purpose may or may not include liquidation of the asset, and may or may not be limited to preserving the status quo pending the completion of other litigation. Finally, in some circumstances, a court may appoint a **custodial receiver**, strictly to preserve the status quo pending some other action or court ruling. This latter type of receiver would typically include a rent receiver as well as a receiver appointed to avoid waste. The distinction between a special receiver and a custodial receiver is not always made clear in court decisions.

In July 2012, the ULC Executive Committee resolved to appoint this drafting committee to prepare a model act on the appointment and powers of real estate receivers. This memorandum identifies the major issues that have been identified during the Uniform Law Commission’s study process and provides relevant samples of statutory language from the various states that have receivership statutes addressing these issues. The memorandum does not take a specific position on any issue. The appendices includes a number of additional resources relevant to the committee’s consideration, including the full text of the Minnesota and Washington receivership statutes (the two states with “comprehensive” receivership legislation), as well as the full text of the receivership legislation in six additional states (California, Indiana, Nebraska, New Mexico,

Oklahoma, and South Dakota) that might be described as “moderate” in scope. The appendices also include a 50-state summary of foreclosure and receivership laws (prepared with the assistance of Professor Freyermuth’s research assistant, John Freese), as well as the full text of the receivership laws in each state.¹

Issues for the Drafting Committee

A. Drafting Approach and General Scope Issues

1. Introduction. While the Joint Editorial Board for Uniform Real Property Acts proposal that prompted this project focused primarily upon the appointment and powers of real estate receivers of mortgaged real estate in the context of mortgage enforcement, courts have appointed receivers for broader purposes, including but not limited to (1) liquidation of insolvent business entities for the benefit of creditors generally; (2) operation of noninsolvent business entities where owners are at an impasse; and (3) liquidation of state-regulated businesses such as insurance companies. In addition, somewhat related to receivership is the common law assignment for the benefit of creditors, in which a debtor voluntarily assigns its property to an assignee who administers (through sale or use) the property for the benefit of repayment of creditors.

The Study Committee gave preliminary consideration to the question of whether an Act should focus narrowly upon receivership of mortgaged real estate or instead more broadly upon receiverships of all types. The Study Committee recommended that the Drafting Committee should focus primarily on “real estate receiverships (including ancillary personal property), rather than draft a general receivership statute,” and suggested that “[a]n Act that addressed the use of equity receivership for the administration of insolvent business entities might be of extremely narrow utility, given the pervasive impact (and pre-emptive effect) of federal bankruptcy law.” Nevertheless, most of the existing statutory models do go beyond merely the appointment of receivers for mortgaged real estate.

2. General drafting approach: Receivership of real estate interests vs. broader receivership and debtor-creditor law; general “comprehensiveness” of drafting approach. We have broken down the existing state statutes into three basic approaches: (1) the “comprehensive” approach; (2) the “moderate in scope” approach; and (3) the “minimalist” approach.

The “comprehensive” approach is best reflected by the receivership statutes in Minnesota [Appendix p. 63] and Washington [Appendix p. 86]. These statutes clearly govern both general receiverships and special or custodial receiverships, and provide extensive guidance on most (if not all) of the substantive issues highlighted in this memorandum. While the statutes in these states provide both the maximum guidance to the appointing judge, they may in some measure provide a greater constraint on the judge’s discretion.

¹ At present, this statutory supplement is not assured to be comprehensive. Professor Freyermuth’s research assistant, John Freese, has prepared the current draft. As Professor Freyermuth identifies any gaps in its coverage, the supplement will be updated accordingly.

The “moderate in scope” approach is reflected by six representative statutes: California [Appendix p. 127]; Indiana [Appendix p. 121]; Nebraska [Appendix p. 119]; New Mexico [Appendix p. 115]; Oklahoma [Appendix p. 113]; and South Dakota [Appendix p. 112]. In general, these statutes are relatively thorough in their treatment of the procedure and standards governing appointment, but do leave some important “gaps” regarding many issues (such as sales of receivership property) addressed in the more comprehensive regimes in Minnesota and Washington.

The “minimalist” approach is perhaps most common among eastern states. Perhaps the most extreme such model is the New Hampshire statute, which provides merely:

The superior court shall have the powers of a court of equity in the following cases: charitable uses; trusts other than those trusts described in RSA 564-A:1, over which the probate court has exclusive jurisdiction as provided in RSA 547:3, I(c) and (d); fraud, accident and mistake; the affairs of partners, joint tenants or owners and tenants in common; the redemption and foreclosure of mortgages; contribution; waste and nuisance; the specific performance of contracts; discovery; cases in which there is not a plain, adequate and complete remedy at law; and in all other cases cognizable in a court of equity.... [N.H. Rev. Stat. Ann. § 498:1]

The New Hampshire statute provides no other explicit guidance regarding the appointment and powers of a receiver, essentially leaving these issues largely to the discretion of the appointing judge.

Questions for Committee discussion include:

- *In general (particularly taking into account enactability concerns), which drafting approach should the Model Act follow: the comprehensive approach, the “moderate in scope” approach, or the “minimalist” approach?*
- *Should the Model Act focus exclusively on receivership of mortgaged real estate (and ancillary personal property)? To what extent (if any) should the Act address the appointment and powers of receivers in other contexts?*
- *Should the Act provide the exclusive means of appointment of a receiver for mortgaged real estate, or should it explicitly preserve the ability of a court to appoint a receiver for real estate other law other than this Act?*
- *To what extent would/should the Act be supplemented by existing principles of receivership law?*

3. General drafting approach: Prescriptive model or “menu” and/or “module” approach? In the typical Uniform Law Commission drafting project, there is a general preference for a uniform law to be prescriptive in nature, i.e., to establish one approach that states might enact uniformly. In some cases, on particularly controversial issues, a uniform law

may provide “alternatives” from which an enacting state might choose (referred to here as a “menu” approach).

The Committee should discuss which drafting approach (or what combination of these approaches) is best suited to this Act. Because the Executive Committee has designated this Act to be a “Model” Act, uniformity and consistency among adoptions may not be a primary objective. Stated differently, it may be more important (for example) that states have a clear rule governing a receiver’s power to sell mortgaged property free and clear of liens — whether any particular state’s rule authorizes such sales or prohibits them — than it is for each state to have the same rule. Thus, one might take the view that this Act should provide a “menu” or “module” approach to drafting, which might facilitate both (a) the ability of states to adopt different substantive rules on controversial issues (e.g., a receiver’s power of sale) and (b) the ability of a state to adopt portions of the Act (or “modules”) without adopting the entire Act (e.g., adopting a provision governing a receiver’s power to sell, but without adopting provisions regarding a receiver’s power to disaffirm or reject executory contracts).

4. Property subject to the Act: owner-occupied primary residences. The Study Committee recommended that the scope of the Act should be limited to real estate other than that which the mortgagor occupies as his/her primary residence. Courts are traditionally very reluctant to appoint a receiver for a home constituting the mortgagor’s primary residence. Further, the Restatement of Mortgages does not permit a receiver to collect imputed rent from a mortgagor who actually occupies the premises and is personally liable on the mortgage obligation.² The Study Committee concluded that if the Act applied to mortgagor-occupied primary residences, it would encounter substantial opposition from consumer interests and would be unlikely to obtain meaningful enactments.³

Such an approach is reflected in Indiana’s receivership statute, see Ind. Code Ann. § 32-30-5-1(4), which provides that in pertinent part:

[U]pon motion by the mortgagee, the court shall appoint a receiver if, at the time the motion is filed, ***the property is not occupied by the owner as the owner’s principal residence*** and:

- (A) it appears that the property is in danger of being lost, removed, or materially injured;
- (B) it appears that the property may not be sufficient to discharge the mortgaged debt;
- (C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

² Restatement (Third) of Property — Mortgages § 4.3(d) (“A receiver appointed under this section may collect imputed rent or a use or occupancy charge from a mortgagor who is in actual possession of the real estate only if: (1) the mortgage or other agreement specifically authorizes such collection; and (2) a specific provision of the mortgage documents bars personal liability of the mortgagor on the mortgage obligation.”).

³ Note that a determination to exclude owner-occupied primary residences under the Act might not preclude a mortgagee in an appropriate case from obtaining the appointment of a receiver for the residence under law other than the Act, as long as the Act does not provide the exclusive means of appointment of a receiver for mortgaged real estate. For example, the Indiana statute excerpted in the text following this note would not preclude a court from appointing a receiver for the mortgagor’s primary residence if the mortgagee could demonstrate waste or other circumstances under which the court in its discretion concludes that a receiver is “necessary to secure ample justice to the parties.” Ind. Code Ann. § 32-30-5-1(3), (7).

- (D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;
- (E) the owner of the property is not personally liable for the debt secured by the mortgage; or
- (F) all or any portion of the property is being, or is intended to be, leased for any purpose.

In implementing this suggested scope limitation, the Drafting Committee should consider the following issues:

- a. *Should the applicability of the Act be governed by number of units?* Some real estate-related Uniform Acts have adopted scope limitations based upon number of units. For example:

Uniform Residential Mortgage Satisfaction Act § 102(13): “‘Residential real property’ means real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.”

Proposed Uniform Residential Real Estate Mortgage Foreclosure Process and Protections Act § 102(22): “‘Residential property’ means real property improved with, one- to four-dwelling units, including structures ancillary to such dwelling units and including attached single-family dwelling units and single-family manufactured housing units placed upon permanent foundations. Residential property includes single-family units in a common interest community.”

Minnesota’s receivership statute, *see* Minn. Stat. Ann. § 576.25, subd. 5, contains a similar limitation:

- (a) A limited receiver shall be appointed at any time after the commencement of mortgage foreclosure proceedings under chapter 580 or 581 and before the end of the period for redemption, if the mortgage being foreclosed:
 - (1) secures an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and
 - (2) is not a lien upon property that was entirely homesteaded, residential real estate containing four or fewer dwelling units where at least one unit is homesteaded; or agricultural property.
- b. *If the Act is not governed by the number of units, what effect would the receivership have on the owner-occupied unit?* For example, the owner-occupied unit in a tri-plex or quad-plex could be excluded from the receivership proceeding, with the receiver taking possession of (and collecting rent from) the occupants of the other units. Alternatively, the unit could be included in the receivership, with a proviso similar to Restatement § 4.3(d) (see page 7, n.2) that the owner-occupant does not have to pay rent to the receiver. If the Committee opted for such an approach, the Committee should consider whether the Act should address the liability of the owner-occupant for utilities, expenses of property and common area maintenance, and the like.

- c. *Should the Act apply to second/third homes and the like?* As noted above, some statutes only exclude the mortgagor's "primary residence." See, e.g., Ind. Code Ann. § 32-30-5-1(4).
- d. *How should the Act address primarily commercial property on which the mortgagor may reside, such as farms and ranches?* There may be a number of circumstances in which mortgaged property envisions mixed use. This may include farms and ranches, as well as urban property in which the mortgagor occupies the upper floors as a primary residence while operating a business from the ground floor. Most existing state statutes do not specifically address such mixed-use property.

The Minnesota receivership statute excludes "agricultural property" from its scope. See Minn. Stat. Ann. § 576.25, subd. 5(a)(2).

Michigan provides that a receiver may not be appointed under its statute for "any dwelling house or farm occupied by any owner thereof as his home or farm." Mich. Comp. Laws Ann. § 600.2927(3).

4. To what property would the receivership apply? If a receiver is appointed to take custody of a specific asset (e.g., mortgaged real estate), one would expect the receiver to collect rents and perform certain landlord duties. However, questions might arise regarding the extent of the property over which the receiver would take custody. For example:

- a. *Related real estate interests.* *Would the receivership property include real estate-related interests such as (1) unsevered oil, gas, and mineral interests; (2) water rights; and (3) fixtures?*
- b. *Personal property.* In the typical commercial real estate mortgage transaction, the mortgagee may also have an Article 9 security interest in certain personal property used in connection with the real estate development. In some situations, this personal property may be limited in amount; in others (such as hotels), this personal property may be extensive and extend to equipment, furnishings, and inventory. There may also be related intangible rights, such as (1) licenses, permits and variances; (2) development rights; and/or (3) executory contracts such as leases and franchise agreements. The Study Committee recommended that while the scope of the Act should be limited to receivership of commercial real estate, the Act should address the receiver's custody and control over related personal property.

An example of potential language may be found in Washington's receivership statute, Rev. Code Wash. Ann. § 7.60.025(1)(b), which makes explicit that in the context of a foreclosure of both real and personal property (i.e., where the loan documents include ancillary personal property), the court may appoint a receiver for both in the following circumstances:

Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject

of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

- (i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or
- (ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property.

c. *Mortgagor-owned business operations.* In some cases, the mortgagor him/her/itself operates some other business on the property (such as a factory or a retail store). The Committee should consider whether such other business ought to be within the scope of the Act.

B. Standards for appointment of a receiver. There is a wide variety of different grounds upon which a court might appoint a receiver for mortgaged real estate. For example, some federal courts have articulated an eight-factor approach in determining whether to appoint a receiver: (1) inadequacy of the security to satisfy the debt; (2) financial position of the mortgagor; (3) fraudulent conduct on the mortgagor's part; (4) inadequacy of the petitioner's legal remedies; (5) imminent danger of the property being lost, concealed, injured, diminished in value, or squandered; (6) probability that harm to the petitioner if the receivership is denied would outweigh injury to the party opposing appointment; (7) probability of the petitioner's success in the action and the possibility of irreparable injury to its interest in the property; and (8) whether the petitioner's interests will in fact be well-served by receivership. See, e.g., *Fleet Business Credit, L.L.C. v. Wings Restaurants, Inc.*, 291 B.R. 550 (D.N.D. Okla. 2003).

In addition, some courts have effectively treated certain factors as absolutely necessary for appointment of a receiver. For example, a significant number of courts will refuse appointment of a receiver where the petitioner has made no showing of waste or impairment of the petitioner's security. See, e.g., *ANJ Future Investments, Inc. v. Alter*, 756 So. 2d 153 (Fla. Ct. App. 2000); *Dart v. Western Sav. & Loan Ass'n*, 438 P.2d 407 (Ariz. 1968). A few courts have required proof of the mortgagor's insolvency as a condition precedent to receivership. See, e.g., *Mutual Benefit Life Ins. Co. v. Frantz Klodt & Son, Inc.* 237 N.W.2d 350 (Minn. 1975) (presumably overruled by Minnesota's now-comprehensive receivership statute); *Chase Manhattan Bank v. Turabo Shopping Center, Inc.* 683 F.2d 25 (1st Cir. 1982).

The Study Committee recommended that the Act should provide a comprehensive list of grounds that would justify the appointment of a receiver, and clarify the extent to which any individual ground was necessary or sufficient as a condition precedent to the appointment of a receiver.

Existing statutes. The following table indicates, for each state, the statutory standards factors which might justify the court's exercise of discretion to appoint a receiver in each state.⁴

	As Estab. by Equity	Waste/ Loss	Default/ Insufficiency	Insolvency	Dissolution	Assg. Rent	Environ. Hazards	Aid of Execution	Fraud
Alaska		X		X	X			X	
Arizona						X			
California		X	X	X		X	X	X	X
Colorado	X	X						X	
Georgia		X							
Idaho	X	X	X	X	X			X	X
Indiana	X	X	X	X	X			X	X
Iowa		X							
Kansas								X	
Kentucky		X							
Michigan	X	X ⁵							
Minnesota	X	X		X	X	X		X	
Missouri	X								
Montana		X	X					X	X
Nebraska	X	X	X			X			X
Nevada	X	X	X	X	X	X	X	X	X
N. Mexico	X	X							
N. Carolina		X						X	
N. Dakota	X	X	X	X	X			X	X
Ohio	X	X	X	X	X			X	X
Oklahoma	X	X	X	X	X			X	X
Oregon		X		X	X			X	
S. Carolina	X	X		X	X			X	
S. Dakota	X	X	X					X	X
Texas	X	X	X	X	X				X
Utah	X	X		X	X			X	
Washington	X	X		X	X	X		X	X
W. Virginia		X							
Wisconsin	X	X		X	X			X	
Wyoming	X	X	X	X	X			X	X

Consistent with the preceding table, here is a comprehensive list of factors that have been identified, either in existing receivership statutes or by judicial decisions:

⁴ This memorandum later addresses the circumstances under which some states have concluded that the applicant may obtain the appointment of a receiver as a matter of right. See *infra* page 13.

⁵ Under Mich. Comp. Laws Ann. § 600.2927(1), waste includes not only physical damage but also nonpayment of taxes and insurance.

- Default under the loan documents, combined with receivership clause in mortgage consenting to appointment of receiver
- Default under the loan documents, combined with inadequacy of security to satisfy the debt
- Insolvency of the defendant/mortgagor
- Waste, loss, concealment, or dissipation of assets (or the danger thereof)
- Default following execution of assignment of rents and leases as security for mortgage debt
- Nonpayment of real estate taxes
- Nonpayment of insurance premiums
- Collection and non-turnover of assigned rents following default
- Fraudulent conduct by defendant (e.g., fraudulent purchase of property)
- Creditor seeking to subject property to its claim, either by pre-judgment attachment or post-judgment execution
- Dissolution of the defendant/mortgagor
- Inadequacy of the petitioner's legal remedies
- Probability that harm to the petitioner if the receivership is denied would outweigh injury to the party opposing appointment
- Probability of the petitioner's success in the action and the possibility of irreparable injury to its interest in the property
- Whether the petitioner's interests will in fact be well-served by receivership
- Other circumstances justifying appointment of a receiver under existing principles of equity

Restatement (Third) of Property — Mortgages § 4.3(a) provides as follows:

A mortgagee is entitled to the appointment of a receiver to take possession of the real estate if:

- (1) the mortgagor is in default under the mortgage;
- (2) the value of the real estate is inadequate to satisfy the mortgage obligation; and
- (3) the mortgagor is committing waste.

The Uniform Assignment of Rents Act, § 7(a), provides as follows:

An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

- (1) the assignor is in default and:
 - (A) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
 - (B) it appears likely that the real property may not be sufficient to satisfy the secured obligation;
 - (C) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
 - (D) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or

(2) other circumstances exist that would justify the appointment of a receiver under law of this state other than this [act].

C. Is appointment of a receiver discretionary with the court, or by right for the mortgagee? The modern commercial mortgage typically contains a provision in which the mortgagor consents to the appointment of a receiver for the real property following default, without regard to whether the mortgagor is insolvent or whether the physical condition of the real property would otherwise justify the appointment of a receiver. Because appointment of a receiver traditionally originated from within the court's equitable discretion, some courts have refused to appoint a receiver — despite the presence of a receivership clause — in cases where they would have denied appointment of a receiver otherwise. *See, e.g.*, *Dart v. Western Sav. & Loan Ass'n*, 438 P.2d 407 (Ariz. 1968); *Chromy v. Midwest Fed. Sav. & Loan Ass'n*, 546 So.2d 1172 (Fla. App. 1989); *Sazant v. Foremost Investments, N.V.*, 507 So.2d 653 (Fla. App. 1987) (receivership clause not binding on court where mortgagor had not committed waste and default did not place mortgagee at serious risk of noncollection); *Gage v. First Federal Sav. & Loan Ass'n*, 717 F. Supp. 745 (D. Kan. 1989); *Barclays Bank, P.L.C. v. Davidson Ave. Assocs., Ltd.*, 644 A.2d 685 (N.J. Super. 1994) (receivership clause “usurps the judicial function” and thus violates public policy). Other courts have treated receivership clauses as presumptively but not conclusively enforceable. *Barclays Bank v. Superior Court*, 137 Cal. Rptr. 743 (Cal. App. 1977); *Riverside Properties v. Teachers Ins. & Annuity Ass'n*, 590 S.W.2d 736 (Tex. App. 1979); *Okura & Co. v. Careau Group*, 783 F. Supp. 482 (C.D. Cal. 1991); *Wellman Sav. Bank v. Roth*, 432 N.W.2d 697 (Iowa App. 1988).

By contrast, significant recent authority supports the view that a receivership clause provides a sufficient basis to appoint a receiver after the mortgagor's default. *See, e.g.*, *Bank of America Nat'l Trust & Sav. Ass'n v. Denver Hotel Ass'n Ltd. Partnership*, 830 P.2d 1138 (Colo. App. 1992); *Fleet Bank v. Zimelman*, 575 A.2d 731 (Me. 1990); *Metropolitan Life Ins. Co. v. Liberty Center Venture*, 650 A.2d 887 (Pa. Super. 1994); *Federal Home Loan Mortgage Corp. v. Nazar*, 100 B.R. 555 (D. Kan. 1989). This position is also expressed by the Restatement (Third) of Property — Mortgages § 4.3(b), UARA § 7(a)(1)(A). Finally, federal courts have routinely held receivership clauses in federally insured mortgages sufficient to justify the appointment of a receiver. *See, e.g.*, *United States v. Berk & Berk*, 767 F. Supp. 593 (D.N.J. 1991); *United States v. Drexel View II, Ltd.*, 661 F. Supp. 1120 (N.D. Ill. 1987).

Sample statutes: Some existing state statutes provide the mortgagee with entitlement to a receiver following default as a matter of right.

- Ind. Code § 32-30-5-1 (emphasis added)

[U]pon motion by the mortgagee, the court **shall** appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner's principal residence and:

- (A) it appears that the property is in danger of being lost, removed, or materially injured;
- (B) it appears that the property may not be sufficient to discharge the mortgaged debt;

(C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;

(D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;

(E) the owner of the property is not personally liable for the debt secured by the mortgage; or

(F) all or any portion of the property is being, or is intended to be, leased for any purpose.

- Minn. Stat. Ann. § 559.17, subd. 2 (emphasis added)

[I]f, by the terms of an assignment [of rents], a receiver is to be appointed upon the occurrence of some specified event, and a showing is made that the event has occurred, the court ***shall, without regard to waste, adequacy of the security, or solvency of the mortgagor,*** appoint a receiver who shall, with respect to the excess cash remaining after application as provided in section 576.25, subdivision 5, apply it as prescribed by the assignment.

- N.Y. Real Prop. Law § 254(10) (emphasis added)

A covenant “that the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver,” ***must be construed as meaning that the mortgagee, his heirs, successors or assigns, in any action to foreclose the mortgage, shall be entitled, without notice and without regard to adequacy of any security of the debt,*** to the appointment of a receiver of the rents and profits of the premises covered by the mortgage; and the rents and profits in the event of any default or defaults in paying the principal, interest, taxes, water rents, assessments or premiums of insurance, are assigned to the holder of the mortgage as further security for the payment of the indebtedness.

- N. Mex. Stat. Ann. § 44-8-4(A) (emphasis added)

Upon application to a district court, the district court ***shall*** appoint a receiver in an action by a mortgagee or secured party or in any other action based upon a contract or other written agreement, where such mortgage, security agreement, contract or other written agreement provides for the appointment of a receiver.

The Arizona statute is somewhat ambiguous, as it suggests that an assignment of rents “***may*** be enforced ***without regard to the adequacy of the security or the solvency of the mortgagor or trustor*** by ... [t]he appointment of a receiver.” Ariz. Rev. Stat. § 33-702(B) (emphasis added).

By contrast, most existing statutes provide (or have been interpreted to mean) that the decision to appoint a receiver rests in the discretion of the court.⁶ Many do so implicitly by

⁶ If the Committee concludes that the Act should provide that the appointment of a receiver is subject to the court’s discretion, whether in some cases or in all cases, the Study Committee suggested that the Act or the Official

noting that the court “may appoint” a receiver. See, e.g., Ala. Code § 6-6-620 (“Receivers may be appointed”); Alaska Stat. § 09.40.240 (“A receiver may be appointed”); Ark. R. Civ. Proc. 66(a) (“Circuit courts may appoint receivers for any lawful purpose when such appointment shall be deemed necessary and proper.”); Cal. Code Civ. Proc. § 564(b)(2) (“A receiver may be appointed”); Colo. R. Civ. Proc. 66(a) (same); Ga. Code Ann. § 9-8-3 (“Equity may appoint a receiver”); Idaho Code § 8-601A(2) (“A receiver may be appointed”); Iowa Code Ann. § 680.1 (“the court ... may appoint a receiver”); Ky. Rev. Stat. § 425.600(1) (“the court may appoint a receiver”); Mich. Comp. Laws Ann. § 600.2927(2) (“the circuit court having jurisdiction of such property may, in its discretion upon complaint or motion filed by such mortgagee, grantee, assignee thereof or trustee under such instrument and upon such notice as the court may require, appoint a receiver of the property”); Miss. Code Ann. § 11-5-151 (“Receivers may be appointed”); Mont. Code Ann. § 27-20-102(4) (“A receiver may be appointed”); Neb. Rev. Stat. § 25-1081 (same); Nev. Rev. Stat. § 32.010 (same); N.C. Rev. Stat. § 1-502 (same); N.D. Cent. Code § 32-10-01 (same); Ohio Rev. Code § 2735.01 (same); Okla. Stat. tit. 12, § 1551 (same); Ore. R. Civ. Proc. 80(B) (same); S.C. Code § 15-65-10 (same); S.D. Codif. Laws §§ 21-21-1, 21-21-2 (same); Utah R. Civ. Proc. 66(a) (“The court may appoint a receiver”); W.Va. Code § 53-6-1 (“A court of equity ... may appoint a special receiver”); Wyo. Stat. Ann. § 1-33-101 (“A receiver may be appointed”).

The Texas statute provides that a receivership clause alone is not sufficient to require appointment of a receiver, making clear that in a foreclosure action, “the court may appoint a receiver **only if**: (1) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or (2) the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.” Tex. Civ. Prac. & Rem Code § 64.001(c) (emphasis added).

The Washington statute is somewhat ambiguous; it provides that “[a] receiver may be appointed” and further provides that “a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate.” Wash. Rev. Code Ann. § 7.60.025(1). However, this subsection also states that the latter qualification does not apply if a foreclosing lender seeks a receiver and the right to a receiver is “provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property.” *Id.*

The Wisconsin statute, Wis. Stat. Ann. § 813.16(7), provides a unique provision that would be applicable in foreclosure proceedings:

If the person seeking the appointment of a receiver ... is a savings and loan association or savings bank supervised by the division of banking or a corporation supervised by the home loan bank board, federal office of thrift supervision, federal deposit insurance corporation, or resolution trust corporation, the court, unless the opposing party objects, shall appoint an officer of such corporation as receiver to act without compensation and to give such bond as the court requires.

Comments should make clear that, in exercising its discretion, the judge does not incur any personal liability that he/she would not face for other judicial acts.

It is not clear whether this statute is intended to entitle such entities to a receiver as a matter of law, or whether it merely means that if the court exercises its discretion to appoint a receiver at the request of such an entity, it must appoint an officer of the entity as the receiver unless the mortgagor objects.

Restatement and Uniform Assignment of Rents Act. Both the Restatement (Third) of Property — Mortgages and the Uniform Assignment of Rents Act express the view that a mortgagee/assignee of rents may obtain the appointment of a receiver following default as a matter of right where the loan documents contain a clause under which the mortgagor consented to appointment. Restatement § 4.3(b) provides that:

A mortgagee is entitled to the appointment of a receiver to take possession of the mortgaged real estate if the mortgagor is in default under the mortgage and the mortgage or other agreement contains either a mortgage on the rents or a provision authorizing appointment of a receiver to take possession and collect rents upon mortgagor default.

Likewise, Uniform Assignment of Rents Act § 7(a) provides that an assignee of rents is entitled to a receiver if the assignor is in default and either “the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default” or “the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect.”

D. Can the mortgagor avoid the appointment of a receiver, suspend the authority of the receiver, or vacate the appointment by posting a bond? A number of states provide that the defendant may avoid the appointment of a receiver, or vacate the appointment if it has already occurred, or suspend the authority of the receiver pending appeal, by posting a sufficient bond with the court. Sample provisions:

- Ala. Code § 6-6-621 (order appointing receiver “must be suspended whenever the appellant enters into bond with sufficient sureties, to be approved by the register or clerk, in such sum as he shall prescribe, payable to the appellee and conditioned to pay the appellee all such costs and damages as he may sustain in case the appeal is not prosecuted to effect”)
- 735 Ill. Comp. Stat. 5/2-415(b) (“On an application for the appointment of a receiver, the court may, in lieu of appointing a receiver, permit the party in possession to retain such possession upon giving bond with such penalty and with such security and upon such condition as the court may order and approve; and the court may remove a receiver and restore the property to the possession of the party from whom it was taken upon the giving of a like bond.”)
- Ind. Code § 32-30-5-10(b) (authority of receiver shall be suspended until final determination of appeal of order of appointment, upon “filing of an appeal bond: (1) with sufficient surety; (2) in the same amount as was required of the receiver; and (3) conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to any officer or person because of the appeal”)
- Kan. Stat. Ann. § 60-13-5 (“If a receiver has been appointed and the appellant files an appeal bond with such terms and conditions as the judge may direct, the appointment

shall be suspended and the property retained in the possession of the appellant pending the final determination of the appeal.”)

- Miss. Code Ann. § 11-5-157 (“On an application for the appointment of a receiver, the court or chancellor may, in the exercise of sound discretion, in lieu of a receiver, order that the party against whom the receiver is asked, execute bond, to be approved by the court or chancellor, payable to the party who asks for the appointment, with sufficient sureties, in a sufficient penalty, to be fixed by the court or chancellor, conditioned according to the nature of the case, as the court or chancellor may direct. Upon the execution, approval, and filing of such bond, the receiver shall not be appointed; and any decree rendered in the cause on final hearing against the principal obligor in the bond shall be rendered against the sureties therein, within the scope of its conditions and penalty. On an application to remove a receiver who shall have been appointed without notice, the court or chancellor may exercise the same discretion, and, in lieu of retaining the receiver, may remove him upon the execution, approval, and filing of such bond; and decree may be rendered thereon as if given on the application for the appointment of a receiver.”)
- N.M. Rev. Stat. Ann. § 44-8-10 (“If an appeal is taken from a district court from a judgment or an order appointing a receiver, perfecting of an appeal from such judgment or order shall not stay enforcement of the judgment or order unless a bond, in a sum fixed by the district court, is given and posted on condition that if the judgment or order is affirmed on the appeal, or if the appeal is withdrawn or dismissed, the appellant will pay all costs and damages that the respondent may sustain by reason of the stay in the enforcement of the judgment or order.”)
- N.C. Gen. Stat. § 1-503 (“In all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom the application is made or pending shall have the discretionary power to refuse the appointment of a receiver if the party against whom such relief is asked, whether a person, partnership or corporation, tenders to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient and duly justified sureties, conditioned for the payment of such amount as may be recovered in the action, and summary judgment may be taken upon the undertaking.”)
- Okla. Stat. tit. 12, § 1559 (“In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such cause, and the payment of all costs and damages that may accrue to the state, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final

determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.”)

- S.C. Code § 15-65-50 (“No receiver of the property of any person or corporation shall be appointed before final judgment in the cause if the party claiming the property so sought to be placed in the hands of a receiver or the party in possession thereof shall offer a bond, in the penalty of double the value of the property, with sufficient security, approved by the clerk of the court of common pleas of the court in which the action is brought, fully to account for and deliver over, whenever thereafter required by any final adjudication in the cause, the property sought to be placed in the hands of a receiver and to meet and satisfy any decree or judgment or order that may be made in the cause.”)
- S.C. Code § 15-65-60 (“Whenever the court or judge before whom such application is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in § 15-65-50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver and direct the redelivery of the property to the party from whose possession it was taken; provided, that when, under the orders of the court or judge, the receiver has incurred any lawful charges and expenses in the care and custody of the property put into his hands the court or judge, before directing the redelivery, may require sufficient security to be given in addition for the payment of such lawful charges and expenses should they be thereafter finally adjudged to be chargeable against the property.”)

E. Who has standing to seek appointment of a receiver? The Study Committee recommended that the Act should confirm existing law under which a mortgagee would have authority to seek appointment of a receiver, and as reflected in Appendices 1 and 2, essentially all of the existing state statutes that are at least moderate in their scope either expressly or impliedly recognize the mortgagee’s standing. Questions for the Committee’s consideration:

- *Should the Act address the ability of other persons to seek appointment of a receiver for real estate?*
- *If so, should this ability extend to: (1) the mortgagor? (2) unsecured creditors? (3) officers, directors, managers or holders of equity interests in the mortgagor? (4) tenants of the mortgaged property? (5) judgment creditors? (6) attaching creditors? (7) mechanics’ lien claimants? (8) co-owners or others with an interest in the real estate? (9) spouses in a divorce or support proceeding? (10) public officials? (11) others?*

Relevant statutory references:

Many of the existing statutes are silent regarding what specific parties, other than foreclosing mortgagees, have standing to seek appointment of a receiver. See, e.g., Ga. Code Ann. § 9-8-1. However, many do identify certain specific persons as having standing to seek appointment of a receiver:

- Ala. Code § 6-6-623(a) (any partner may seek receiver in partnership dissolution)

- Alaska Stat. § 09.40.240(1) (“on the application of either party, when the party’s right to the property ... is probable, and where it is shown that the property or its rents or profits are in danger of being lost or materially injured or impaired”)
- Cal. Code Civ. Proc. § 564(b) (receiver may be appointed in action by vendor in fraudulent purchase; by creditor to subject any property to creditor’s claim; by partner or other joint owner of property; by assignee of rents; by certain public officials)
- Colo. R. Civ. Proc. 66(a) (“on the application of either party, when he establishes a prima facie right to the property, or to an interest therein, which is the subject of the action and is in possession of an adverse party and such property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired....”); Colo. Rev. Stat. Ann. § 38-38-601 (upon application of foreclosing mortgage lender)
- Idaho Code § 8-601 (substantially similar to Cal. Code Civ. Proc. § 564(b)); § 8-602 (upon application of creditor, member, or shareholder of dissolving corporation)
- Ind. Code § 32-30-5-1 (by vendor to vacate fraudulent purchase; by creditor to subject any property to creditor’s claim; by partner or joint owner of property)
- Iowa Code Ann. § 680.1 (substantially similar to Alaska Stat. § 09.40.240(1))
- Ky. Rev. Stat. § 425.600 (same)
- Miss. Code Ann. § 11-5-151 (by “party”)
- Mont. Code Ann. § 27-20-102 (substantially similar to Cal. Code Civ. Proc. § 564(b))
- Neb. Rev. Stat. § 25-1081 (same)
- Nev. Rev. Stat. § 32.010 (same)
- N. Mex. Rev. Stat. Ann. § 44-8-4(B) (“persons owning or claiming an interest in the receivership estate”)
- N.C. Gen. Stat. § 1-502 (substantially identical to Alaska Stat. § 09.40.240(1))
- N.D. Cent. Code § 32-10-01 (substantially similar to Cal. Code Civ. Proc. § 564(b))
- Ohio Rev. Code § 2735.01 (same)
- Okla. Stat. tit. 12, § 1551 (same)
- Ore. R. Civ. Proc. 80B (“on the application of any party, when such party’s right to the property ... is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired”; by an attaching creditor; by a judgment lien creditor; dissolution or insolvency of corporation or cooperative association)
- S.C. Code § 15-65-10 (substantially similar to Ore. R. Civ. Proc. 80B)
- S.D. Codif. Laws §§ 21-21-1 to 21-21-5 (substantially similar to Cal. Code Civ. Proc. § 564(b))
- Tex. Civ. Prac. & Rem. Code § 64.001(a) (by any party in (1) an action by vendor to vacate a fraudulent purchase of property, (2) an action by a creditor to subject the property to its claim, or (3) an action between partners or other joint owners of the property or an interest therein)
- Wash. Rev. Code Ann. § 7.60.025(1) (any party with a probable right to or interest in property where property or its revenue-producing potential is in danger of being lost or materially injured or impaired; mortgagor; judgment creditor; attaching creditor; transferor seeking to rescind fraudulent transfer; insolvency or dissolution of any person; certain public officials)
- Wyo. Stat. Ann. § 1-33-101(a) (substantially similar to Ind. Code § 32-30-5-1)

F. Who may serve as a receiver?

1. *Can the mortgagee or an interested party serve as receiver?* Traditionally, the receiver is an independent third party who serves as an officer of the court and owes a fiduciary duty to the mortgagor and the mortgagee. 1 Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 4.33 (5th ed. 2007). Some courts have appointed the mortgagee as a receiver, *see, e.g.*, First Interstate Bank v. Heritage Square, Ltd., 833 P.2d 240 (N.M. 1992), and the United States (HUD) has served as an effective receiver in cases where it is the mortgagee. United States v. Drexel View II, Ltd., 661 F. Supp. 1120 (N.D. Ill. 1987). Further, the Restatement of Mortgages does not prohibit the appointment of the mortgagee as a receiver, noting that “the mortgagee-receiver often has a greater incentive than its third-party counterpart to control receivership costs.” Restatement (Third) of Property — Mortgages § 4.3, comment e (1997).

Nevertheless, in most states, there are statutory prohibitions on the appointment of an interested party. In some cases, this prohibition is absolute; in other cases, the court may appoint an interested party with the consent of the parties.

Relevant statutory references:

- Ariz. R. Civ. Proc. 66(b) (“The court shall not appoint as receiver a party, an officer or employee of a party, an attorney for a party, or a person interested in the action; provided, however, that after such notice as the court shall find is adequate, and if no party shall have objected, the court may appoint an employee of a party or an officer of a corporate party, or a person otherwise interested in the action, in a case in which the court finds that the property has been abandoned or that duties of the receiver will consist chiefly of physical preservation of the property (including crops growing thereon), collection of rents or the maturing, harvesting and disposition of crops then growing thereon.”)
- Idaho Code § 8-603 (“No party, or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties filed with the clerk.”)
- Ind. Code § 34-1-12-2 (court may not appoint as a receiver “(1) a party; (2) an attorney representing a party; or (3) another person interested in an action”)
- Kan. Stat. Ann. § 60-1301 (“A person who has an interest in property or in the outcome of the proceeding shall not be appointed or continued as a receiver if objection is made thereto by another interested party unless the judge finds and rules that such objection is arbitrary or unreasonable.”)
- Minn. Stat. Ann. § 576.26, subd. 1 (receiver must be “independent as to the parties and the underlying dispute”)

- Mont. Code Ann. § 27-20-202 (“No party, attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk.”)
- Neb. Rev. Stat. § 25-1086 (“No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.”)
- N.D. Cent. Code § 32-10-02 (“No party or person interested in an action can be appointed receiver therein without the written consent of the opposing party filed with the clerk.”)
- Ohio Rev. Code § 2735.02 (“No party, attorney, or person interested in an action shall be appointed receiver therein except by consent of the parties.”)
- Okla. Stat. tit. 12, § 1552 (“No party, or attorney, or person interested in an action, shall be appointed receiver therein except by consent of all parties thereto.”)
- S.D. Codif. Laws § 21-21-7 (“No party or person interested in an action can be appointed receiver therein, without the written consent of the parties, filed with the clerk.”)
- Tex. Civ. Prac. & Rem. Code § 64.021(a)(2) (receiver must “not be a party, attorney, or other person interested in the action for appointment of a receiver”)
- Utah R. Civ. Proc. 66(b) (“No party or attorney to the action, nor any person who is not impartial and disinterested as to all the parties and the subject matter of the action may be appointed receiver without the written consent of all interested parties.”)
- Wash. Rev. Code Ann. § 7.60.035(2), (3) (person may not be appointed as a receiver if he is “party to the action, or is a parent, grandparent, child, grandchild, sibling, partner, director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or holder of any equity interest in, or controls or is controlled by, the person whose property is to be held by the receiver, or who is the agent or attorney of any disqualified person” or if he “[h]as an interest materially adverse to the interest of persons to be affected by the receivership generally”)
- Wyo. Stat. Ann. § 1-33-102 (“No person interested in an action shall be appointed receiver or be a representative of the receiver except by consent of the parties.”)

Arizona allows the appointment of a party, if no other party has objected, where the property has been abandoned. Ariz. R. Civ. Proc. 66(b). Arizona also provides that if no party has objected, the court may appoint an employee or officer of a party to serve as receiver if the duties “will consist chiefly of physical preservation of the property (including crops growing thereon), collection of rents or the maturing, harvesting and disposition of crops then growing thereon.” *Id.*

2. *Must the receiver be an individual, or may the receiver be an entity? Must the receiver possess any particular professional qualifications (e.g., attorney, accountant, or real estate professional)?* Most of the statutes are silent regarding whether the receiver must have particular qualifications.

- The Minnesota statute does require that the receiver for mortgaged property “shall be or shall retain an experienced property manager.” Minn. Stat. Ann. § 576.25, subd. 5(c). The Minnesota statute also requires that any person may serve as a receiver, regardless of residency, so long as the court makes written conclusions in the order of appointment that the proposed receiver is “qualified to serve as receiver” and is “independent as to the parties and the underlying dispute.” Minn. Stat. Ann. § 576.26, subd. 1. The Minnesota statute provides a “laundry list” of considerations relevant to the proposed receiver’s qualifications and independence. Minn. Stat. Ann. § 576.26, subd. 2, subd. 3 (see Appendix, pp. 71-72).
- The New Mexico statute provides that the receiver must be at least 18 years of age or a corporation or other business entity in good standing and authorized to do business in New Mexico. N.M. Rev. Stat. Ann. § 44-8-6(A).
- The Ohio statute provides that “[n]o person except a resident of this state shall be appointed or act as receiver of a railroad or other corporation” within Ohio. Ohio Rev. Code § 2735.02.
- The Texas statute provides that to be appointed a receiver for property in Texas, a person must “be a citizen and qualified voter of [Texas] at the time of appointment,” and further provides that the receiver “must maintain actual residence in [Texas] during the receivership.” Tex. Civ. Prac. & Rem. Code § 64.021(a)(1), (c). The voting requirement would appear to require that the receiver be an individual.
- The Washington statute disqualifies any person who “has been convicted of a felony or other crime involving moral turpitude or is controlled by a person who has been convicted of a felony or other crime involving moral turpitude” and any person who is “the sheriff of any county.” Wash. Rev. Code Ann. § 7.60.035(1), (4).

G. Bonding

1. *Must the applicant post a bond, and how should the court set the amount?* A few of the existing state statutes require the applicant to post a bond to protect adverse parties against damages sustained if the appointment is later vacated or the receiver is discharged as having been improvidently appointed. Typically, the statutes require that this bond be in an amount set by the court, but without providing specific guidance to the court as to how that amount would be determined. See, e.g., Ala. Code § 6-6-622(a); N.C. Gen. Stat. § 1-502.1 (in addition, “judge may require that the amount of bond be increased for this purpose at any time after the appointment of a receiver”). The Nebraska statute provides that this bond shall not “be in excess of a sum equal to double the value of the property in question” and “shall be executed by one surety where such surety is an incorporated surety company ... and by two or more sureties where such sureties are natural persons” Neb. Rev. Stat. § 25-1084. The Kansas and Washington statutes gives the judge **discretion** to require the applicant to post a bond. Kan. Stat. Ann. § 60-1304; Wash. Rev. Code Ann. § 7.60.025(5).

By contrast, some of the statutes require the applicant to post such a bond only if the application is being made on an ex parte basis. Ariz. R. Civ. Proc. 66(a); Cal. Code Civ. Proc. § 566(b); Idaho Code § 8-603; Miss. Code Ann. § 11-5-155. The Illinois statute provides that the applicant need not post such a bond when “for good cause shown, and upon notice and full hearing, the court is of the opinion that a receiver ought to be appointed without such bond.” 735 Ill. Comp. Stat. 5/2-415(a).

Other states give the court the **discretion** to require a bond from the ex parte applicant. Mont. Code Ann. § 27-20-203; N.D. Cent. Code § 32-10-02; S.D. Codif. Laws § 21-21-6.

2. Must the receiver post a surety bond, and how should the court set the amount? Nearly all of the state statutes require that the receiver must post a bond in an amount determined by the court, but provide no specific guidance to the court with respect to the amount of the bond. See, e.g., Alaska Stat. § 09.40.250 (“one or more sufficient sureties”); Ariz. R. Civ. Proc. 66(b)(2); Ark. R. Civ. Proc. 66(a); Cal. Code Civ. Proc. § 567(b); Colo. R. Civ. Proc. 66(b) (“with one or more sureties”); Idaho Code § 8-604 (“one or more sureties”); Ind. Code § 32-30-5-3 (“with one or more sureties”); Iowa Code Ann. § 680.3 (“with sureties”); Kan. Stat. Ann. § 60-1302 (“with sufficient sureties”; additional bond may be required, or bond may be reduced, by the court at any time); Mich. Comp. Laws Ann. § 600.2926; Minn. Stat. Ann. § 576.27 (“with a surety authorized to write bonds in the state”); Miss. Code Ann. § 11-5-159 (“with such sureties as may be approved by the court or chancellor”); Mo. Rev. Stat. § 515.250; Mont. Code Ann. § 27-20-301 (“with one or more sureties”); N.C. Gen. Stat. § 1-504 (“with at least two sufficient sureties”); N.D. Cent. Code § 32-10-03 (“with one or more sureties”); Ohio Rev. Code § 2735.03 (“with surety approved by the court”); Okla. Stat. tit. 12, § 1553 (“with one more sureties”); R.I. R. Civ. Proc. 66(k); S.D. Codif. Laws § 21-21-8 (“with one or more sureties”); Tex. Civ. Prac. & Rem. Code § 64.023; Wash. Rev. Code Ann. § 7.60.045 (“with one or more sureties”); W.Va. Code § 53-6-1 (“with good security”).

The Washington statute provides a statutory form for the Receiver’s Bond, and also provides that the court “may approve the posting of alternative security, such as a letter of credit or a deposit of funds,” in lieu of a bond. Wash. Rev. Code Ann. § 7.60.045.

Nebraska’s statute requires the receiver to post a bond in an amount set by the court, but provides that this sum may not exceed “double the value of the property in question.” Neb. Rev. Stat. § 25-1084. See also Wyo. Stat. Ann. § 1-33-103 (same).

Virginia’s statute provides that a general receiver must annually provide a bond, with surety approved by the court, “sufficient at least to cover the probable amount under his control in any one year.” Va. Code Ann. § 8.01-587. Wisconsin’s statute requires the receiver to post a bond in an amount “sufficient to cover all property likely to come into the receiver’s hands.” Wis. Stat. Ann. § 813.16(6).

Georgia’s statute provides that the judge has the discretion to require the receiver to post a bond. Ga. Code Ann. § 9-8-10 (“The judge of the superior court, in his discretion, may require a receiver to give bond conditioned for the faithful discharge of the trust reposed.”).

New Mexico’s statute provides that “upon request and a showing of good cause by an interested party, the district court may require the receiver to post a bond unless the mortgage, security agreement, contract or other written agreement dispenses with the posting of bond.” N.M. Rev. Stat. Ann. § 44-8-6(D).

Tennessee’s statute provides that the clerk shall take a bond from the receiver “when so directed by the order of the judge.” Tenn. Stat. Ann. § 29-1-104.

Utah provides that the court “may require security from a receiver.” Utah R. Civ. Proc. 66(c).

Several states provide that if the receiver must post a bond, the receiver is allowed to include the cost of the bond as part of its lawful expenses/costs of administration. See, e.g., Cal. Code Civ. Proc. § 567(b) (“The receiver shall be allowed the cost of the undertaking.”); Ga. Code Ann. § 9-8-14(a) (“Receivers ... may include as part of their lawful expenses or costs of administration such reasonable sum or sums paid to the company or companies for the suretyship not exceeding 1 percent per annum on the amount of the bond....”).

H. Powers of Receivers

1. General background. The powers of a receiver are limited by statute, by the order appointing the receiver, and by subsequent court orders. Miller & Starr, California Real Estate § 33:9 (3d ed. 2009). While the Uniform Assignment of Rents Act did address the standards for appointment of a receiver for mortgaged real estate, nothing in UARA explicitly addressed the scope of the receiver’s powers.

Most existing state receivership statutes do not comprehensively address the subject of the scope of the receiver’s powers, or merely state that the receiver has the authority to perform such acts as the court may authorize. See, e.g., Kan. Stat. Ann. § 60-1303 (“The receiver shall perform such acts respecting the property or business as the judge may authorize.”); Neb. Rev. Stat. § 25-1087 (“Every order appointing a receiver shall contain special directions in respect to his powers and duties, and ... such further directions may be made in that behalf by the court or judge as may in the further progress of the cause be proper.”). If state statutes do not explicitly authorize a receiver to exercise a certain power, then the scope of the receiver’s powers is established by virtue of the order appointing the receiver. Under this approach, a receiver could not exercise any powers not expressly granted by the receivership order. See, e.g., Morand v. Superior Court, 38 Cal. App. 3d 347, 113 Cal. Rptr. 281 (1974) (where order authorized receiver to file an action for unpaid rent against a specific party, receiver lacked authority to commence action against other parties unnamed in the order).

Some states have addressed this problem by providing a set of “default” powers that a receiver may exercise. The most common formulation can be seen in Idaho Code § 8-605, which provides:

The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts,

to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Identical or substantially identical statutes include: Cal. Code Civ. Proc. § 568; Ind. Code § 32-30-5-7; Iowa Code. Ann. § 680.4; Mont. Code Ann. § 27-20-302; N.D. Cent. Code § 32-10-04; Ohio Rev. Code § 2735.04; Okla. Stat. tit. 12, § 1554; S.D. Codif. Laws § 21-21-9; Tex. Civ. Prac. & Rem. Code §§ 64.031, 64.033; Utah R. Civ. Proc. § 66(e); Wyo. Stat. Ann. § 1-33-104.

Other state statutes are slightly less comprehensive:

- Ariz. R. Civ. Proc. 66(c)(1) (“The receiver may, subject to control of the court, commence and defend actions. The receiver shall take and keep possession of the property, receive rents, collect debts and perform such other duties respecting the property as authorized by the court.”)
- Ky Rev. Stat. § 425.600(2) (“The receiver or master commissioner has, under the control of the court, power to bring and defend actions, respecting the property, to take and keep possession of the property, to receive rents, collect debts and generally to do such acts respecting the property as the court may authorize.”)
- Mich. Comp. Laws Ann. § 600.2927(2) (“Subject to the order of the court, the receiver [of mortgaged property] may collect the rents and income from such property and shall exercise such control over such property as to such court may seem proper.”)

The Louisiana statute provides that a receiver (or “keeper”) “shall have full powers of management and administration of the property and may operate the property seized, whether immovable, movable, or both, in the ordinary course of business.” La. Rev. Stat. Ann. § 9:5138(A).

N.M. Rev. Stat. Ann. § 44-8-7 provides:

Unless otherwise ordered by the district court, a person who acts as a receiver shall:

- A. prepare an inventory of the receivership estate within thirty days of appointment and file that inventory with the district court;
- B. collect and manage the receivership estate in a reasonable and prudent manner;
- C. file monthly operating reports with the district court and provide copies to all parties who have entered an appearance and allow such parties reasonable access to the books and records of the receivership;
- D. enter into contracts reasonably necessary to operate, maintain and preserve the receivership estate;
- E. take possession of all available books, records and other documents related to the receivership estate;
- F. lease assets of the receivership estate in accordance with the powers and limitations contained in the original order of appointment;
- G. bring and defend actions in his capacity as receiver to maintain and preserve the receivership estate;
- H. subject to prior order of the district court, engage and retain attorneys, accountants, brokers or any other persons and pay their compensation or fees, sell or

mortgage property of the receivership estate, borrow money for the receivership estate, make distributions of receivership proceeds to any party or pay compensation to the receiver; and

I. exercise any other powers expressly granted by statute or an order of the district court.

Minn. Stat. Ann. § 576.29, subd. 1, provides the most comprehensive set of default powers:

(a) A receiver, whether general or limited, shall have the following powers in addition to those specifically conferred by this chapter or otherwise by statute, rule, or order of the court:

(1) the power to collect, control, manage, conserve, and protect receivership property;

(2) the power to incur and pay expenses incidental to the receiver's exercise of the powers or otherwise in the performance of the receiver's duties;

(3) the power to assert rights, claims, causes of action, or defenses that relate to receivership property; and

(4) the power to seek and obtain instruction from the court with respect to any matter relating to the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

(b) In addition to the powers provided in paragraph (a), a general receiver shall have the power:

(1) to (i) assert any rights, claims, causes of action, or defenses of the respondent to the extent any rights, claims, causes of action, or defenses are receivership property; (ii) maintain in the receiver's name or in the name of the respondent any action to enforce any right, claim, cause of action, or defense; and (iii) intervene in actions in which the respondent is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the court;

(2) to pursue any claim or remedy that may be asserted by a creditor of the respondent under sections 513.41 to 513.51;

(3) to compel any person, including the respondent, and any party, by subpoena pursuant to Rule 45 of the Minnesota Rules of Civil Procedure, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things with respect to receivership property or any other matter that may affect the administration of the receivership;

(4) to operate any business constituting receivership property in the ordinary course of the business, including the use, sale, or lease of property of the business or otherwise constituting receivership property, and the incurring and payment of expenses of the business or other receivership property;

(5) if authorized by an order of the court following notice and a hearing, to use, improve, sell, or lease receivership property other than in the ordinary course of business; and

(6) if appointed pursuant to section 302A.753, 308A.945, 308B.935, 317A. 753, or 322B.836, to exercise all of the powers and authority provided by the section or order of the court.

Minnesota's statute also provides further authorizations for specific actions such as employment of professionals, borrowing, and selling property free and clear of liens (discussed elsewhere in

this memo). Washington's statute, Wash. Rev. Code Ann. § 7.60.060 also provides enumerated powers comparable to those in Minnesota's statute. See Appendix pp. 86-111.

2. Does the receiver have the power to sell mortgaged real estate, and does this power extend to sales free and clear of liens? In the modern-day commercial real estate market, many lenders and servicers facing defaulted loans wish to use a receiver to sell the real property prior to the completion of a foreclosure proceeding or in lieu of foreclosure. As Jack Murray and Ken Jannen have argued:

Some of the arguments in favor of such a strategy are that it: 1) avoids lender-liability claims because the receiver is an officer of the court and the buyer is purchasing the property "as is" with no representations or warranties as to the condition of the property and no recourse to the lender for such matters as environmental contamination or construction-defect liability; 2) enables third-party professionals to operate, manage and market the property efficiently and expeditiously to obtain the best possible price; and 3) avoids the delays and expenses involved in completing a foreclosure. [John C. Murray and Kenneth R. Jannen, *Public and Private Sales of Real Property by Federal Court Receivers — Practical Considerations* (2010)]

Absent express authority in the receivership order, case law is unclear whether a receiver can sell the mortgaged premises, either subject to the existing mortgage or free and clear of the mortgage and subordinate liens (i.e., with the same effect as a foreclosure sale). Traditionally, the receiver's role upon appointment was understood to be primarily custodial, i.e., to operate, maintain, and preserve the property pending the foreclosure sale. However, a receivership could be an effective way to dispose of mortgaged property, either subject to the existing mortgage (which may be attractive for the sale of property securing CMBS loans) or as an alternative to a foreclosure (distress) auction.

In some states, courts have rejected the notion that a receiver has an inherent power of sale, on the theory that a receivership is "custodial" in nature and designed to preserve the status quo. See, e.g., *Kirven v. Lawrence*, 137 S.E.2d 764 (S.C. 1964); *Andrick Dev. Corp. v. Maccaro*, 311 S.E.2d 95 (S.C. Ct. App. 1984); *Eppes v. Dade Developers, Inc.*, 170 So. 875 (Fla. 1936); *Shubh Hotels Boca, LLC v. FDIC*, 46 So.3d 163 (Fla. Dist. Ct. App. 2010) (receiver lacked power to sell hotel even though appointing court had authorized the sale; no Florida statute authorizes a court-appointed receiver in a foreclosure case to sell the mortgaged property in contravention of mortgagor's right of redemption).

In a few states, there is existing judicial authority for the receiver to conduct a sale of assets within its custody. *In re Valley Road Sewerage Co.*, 685 A.2d 11 (N.J. Super. 1988); *Bogosian v. Foerderer Tract Committee, Inc.*, 399 A.2d 408 (Pa. Super. 1979).

As noted previously, see *supra* pp. 24-25, statutes in 12 states (CA, ID, IN, IA, MT, ND, OH, OK, SD, TX, UT, WY) provide the receiver with general authority to "make transfers," but without further statutory guidance with regard to the terms governing such transfers, whether such general authority permits the sale of mortgaged property free and clear of liens, or the need for court approval for such transfers.

The North Carolina statutes provide that the appointing court has the power to order a sale of property in the hands of the receiver. N.C. Gen. Stat. § 1-505 (“In a case ... in which a receiver has been appointed, the [court] shall have power and authority to order a sale of any property, real or personal, in the hands of a receiver duly and regularly appointed.... Sales of property authorized by this section shall be upon such terms as appear to be to the best interests of the creditors affected by the receivership.”). Section 1-505 further provides that the procedure for such sales is governed by Chapter 1, Article 29A of the North Carolina General Statutes, which makes clear that this sale may be conducted by the receiver. N.C. Gen. Stat. § 1-339.4(7). Case authority establishes that such a sale may be free and clear of liens, with the liens transferred to sale proceeds. *National Surety Corp. v. Sharpe*, 72 S.E.2d 109 (1952).

The Minnesota and Washington statutes provide the most comprehensive provisions regarding the ability of the receiver to conduct a receiver’s sale free and clear of liens. For example, Minn. Stat. Ann. § 576.46 provides that a general receiver can, with court approval, conduct a sale free and clear of liens and rights of redemption. The statute addresses the circumstances under which such a sale can occur, the transfer of lien to sale proceeds, the right of lienholders to credit bid, and the protection of a good faith purchaser in the event that the order approving the sale is later reversed:

Subdivision 1. Sales free and clear of liens.

(a) The court may order that a general receiver's sale of receivership property is free and clear of all liens, except any lien for unpaid real estate taxes or assessments and liens arising under federal law, and may be free of the rights of redemption of the respondent if the rights of redemption are receivership property and the rights of redemption of the holders of any liens, regardless of whether the sale will generate proceeds sufficient to fully satisfy all liens on the property, unless either:

(1) the property is (i) real property classified as agricultural land under section 273.13, subdivision 23, or the property is a homestead under section 510.01; and (ii) each of the owners of the property has not consented to the sale following the time of appointment; or

(2) any owner of the property or holder of a lien on the property serves and files a timely objection, and the court determines that the amount likely to be realized from the sale by the objecting person is less than the objecting person would realize within a reasonable time in the absence of this sale.

(b) The receiver shall have the burden of proof to establish that the amount likely to be realized by the objecting person from the sale is equal to or more than the objecting person would realize within a reasonable time in the absence of the sale.

(c) Upon any sale free and clear of liens authorized by this section, all liens encumbering the property conveyed shall transfer and attach to the proceeds of the sale, net of reasonable expenses approved by the court incurred in the disposition of the property, in the same order,

priority, and validity as the liens had with respect to the property immediately before the sale. The court may authorize the receiver to satisfy, in whole or in part, any ownership interest or lien out of the proceeds of the sale if the ownership interest or lien of any party in interest would not thereby be impaired.

Subdivision 2. Co-owned property. If any receivership property includes an interest as a co-owner of property, the receiver shall have the rights and powers afforded by applicable state or federal law of the respondent, including but not limited to any rights of partition, but may not sell the property free and clear of the co-owner's interest in the property.

Subdivision 3. Right to credit bid. A creditor with a claim secured by a valid and perfected lien against the property to be sold may bid on the property at a sale and may offset against the purchase price part or all of the amount secured by its lien, provided that the creditor tenders cash sufficient to satisfy in full the reasonable expenses, approved by the court, incurred in the disposition of the property and all liens payable out of the proceeds of sale having priority over the lien of that creditor.

Subdivision 4. Effect of appeal. The reversal or modification on appeal of an authorization to sell property under this section does not affect the validity of a sale to a person that purchased the property in good faith, whether or not the person knew of the pendency of the appeal, unless the authorization and sale is stayed pending the appeal.

Under Minnesota's statute, a "general receivership" means "a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest." Minn. Stat. Ann. § 576.21(h).

However, it is not clear whether a foreclosing mortgagee would necessarily be entitled to the appointment of a general receiver. Minn. Stat. Ann. § 576.25, subd. 5(a) provides that a foreclosing mortgagee is entitled to the appointment of a "limited receiver." Minn. Stat. Ann. § 576.25, subd. 5(b) provides that a mortgagee is entitled to a "receiver" (with no specification as to type) if the mortgagor has breached a covenant relating to application of tenant security deposits, payment of taxes, special assessments, or insurance (or escrow therefor), or a lease covenant regarding the habitability of the premises.

The Washington statute provides a similar approach. See Appendix, pp. 86-87, 109. It distinguishes between a "general receiver" and a "custodial receiver." Wash. Code Rev. Ann. § 7.60.005(11). The statute provides that a general receiver, "with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business," Wash. Code Rev. Ann. § 7.60.260(1), and that such a sale may be free and clear of liens and all rights of redemption. Wash. Code Rev. Ann. § 7.60.260(2) (in addition, sale of real property free and clear of liens and rights of redemption is permitted "where the debtor intended to sell [the property] in its ordinary course of business"). By contrast, a custodial receiver cannot sell real property free and clear other than in the ordinary course of business. Wash. Code Rev. Ann. § 7.60.260(1).

The Washington statute provides that “[w]hen the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee’s sale ... the court shall appoint the receiver as a custodial receiver.” Wash. Rev. Code Ann. § 7.60.015. This would indicate that ordinarily the foreclosing mortgagee would not be entitled to have the receiver sell the property free and clear, other than in the ordinary course of business. However, section 7.60.015 also provides that “[t]he court by order may convert either a general receivership or a custodial receivership into the other.”

Federal law, as set forth in 28 U.S.C.A. §§ 2001 to 2004, authorizes receivers appointed by a federal court to sell mortgaged property free and clear of liens. The federal statutes are vague with respect to the procedures for marketing and selling the property, “thereby allowing for flexibility and creativity.” Kay Kress, *Federal Receivership* (2005 ABA Business Law Section Meeting). As one federal court has noted, “the power of sale is within the scope of a receiver’s ‘complete control’ over receivership assets ..., a conclusion firmly rooted in the common law of equity receiverships.” *Securities Exch. Comm’n v. American Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996).

The applicable federal statute concerning private sales by federal receivers requires a hearing with notice to all interested parties before the court can authorize a private sale. 28 U.S.C. § 2001(b) (“After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby.”). Because the authorization to sell constitutes separate relief from the appointment of the receiver itself, the motion to authorize a private sale by the receiver could be made concurrently with the motion to appoint a receiver or after the appointment of a receiver. *Murray & Jannen, supra*.

Before the court may confirm a private sale by the receiver, it must appoint three disinterested persons to appraise the property, and the terms of the sale must be published in such newspaper of general circulation as the court directs at least ten days before confirmation. 28 U.S.C.A. § 2001(b). The court may not confirm a private sale if the sale price is less than two-thirds of the appraised value. *Id.* Likewise, the court cannot confirm the sale if a bona fide offer or “upset bid” is made that provides at least a ten-percent increase over the price offered at the private sale. *Id.* *Murray and Jannen* have question whether the court must still follow this appraisal process if the borrower and all lienholders consent to the private sale; the statute does not clearly indicate whether its requirements can be waived or modified. *Murray & Jannen, supra*, at 8.

Finally, several courts have held that under federal law, there is no right of post-sale redemption from judicial sales conducted under 28 U.S.C.A. § 2001(b), notwithstanding any state statutory redemption rights the mortgagor might otherwise claim. See, e.g., *United States v. Heasley*, 283 F.2d 422 (8th Cir. 1960). *But see U.S. v. Montgomery*, 268 F. Supp. 787 (D. Kan. 1967) (language in section 2001(b) “upon such terms and conditions as the court approves” authorizes the court to provide delinquent taxpayer with sixty-day redemption period as a matter of equity, even though taxpayer was not entitled to longer state law statutory redemption period).

	Sale Permitted?	Free and Clear?	Appraisal Required?	Procedural Requirements	Effect on Redemption	Do Sales Occur?
Alabama	State statute is silent					In federal receiverships
Alaska	State statute is silent					?
Arizona	State statute is silent					Yes, per Trigild Manual
Arkansas	State statute is silent					
California	Yes	Not explicit	Not by statute	Notice; confirmation		Yes, per Trigild Manual
Colorado	State statute is silent					?
Connecticut	State statute is silent	Judicial authority				?
Delaware		Yes (insolvency)				
D.C.	Statute is silent					
Florida	No	N/A			N/A	
Georgia	Yes	Yes	?	?	N/A	?
Hawaii	Judicial authority	?				?
Idaho	Yes	Unclear	?	?	?	?
Illinois	Statute is silent					?
Indiana	Yes	Unclear	?	?	?	Yes, per Trigild Manual
Iowa	Statute is silent					
Kansas	Statute is silent					?
Kentucky	Statute is silent					Sometimes ⁷
Louisiana	Statute is silent					?
Maine	In dissolution cases	?				Yes, per Trigild Manual
Maryland	Statute is silent					?
Massachusetts	Statute is silent	Varies by judge			Varies by judge	Rare
Michigan	Yes, post-judgment in judicial FC	Yes (CSB Bank v. Christy)		Notice/hearing		Yes
Minnesota	Yes	Yes (general receiverships)	Only if ordered	Notice/hearing	Free and clear	Yes
Mississippi	Statute is silent					?

⁷ The Trigild Manual indicates that sometimes the authority to conduct the foreclosure sale is delegated to the receiver. Trigild Manual, at 168.

Missouri	Statute is silent					Yes, per Trigild manual
Montana	Yes	Unclear				?
Nebraska	Statute silent; case authority doubtful					?
Nevada	Statute is silent					Yes, per Trigild Manual
N. Hampshire	Statute is silent					?
New Jersey	Yes	Subject to senior lien				Seldom-used
New Mexico	Statute is silent					Not common
New York	No					No
N. Carolina	Yes	Yes				?
N. Dakota	Yes	Unclear				
Ohio	Yes	Unclear				Yes, per Trigild Manual
Oklahoma	Yes	Unclear				?
Oregon	Not in custodial receivership					No
Pennsylvania	Judicial authority					?
Rhode Island	Statute silent re: custodial receivers	Yes	Customary, but not required	Notice/hearing	Free and clear	Yes
S. Carolina	No					
S. Dakota	Yes	Unclear				?
Tennessee	Statute is silent					?
Texas	Yes	Unclear				?
Utah	Yes	Unclear				?
Vermont	Statute is silent					?
Virginia	Statute is silent					?
Washington	Yes	Yes	Only if ordered	Notice/hearing	Free and clear	Yes
W. Virginia	Statute is silent					?
Wisconsin	Statute is silent					?
Wyoming	Yes	Unclear				?

Questions for the Committee's consideration. The Study Committee recommended that the Act should address the following questions:

1. *Should a receiver have the power to sell the mortgaged real estate, either itself or through professionals retained for that purpose?*

- a. *If the receiver retains other professionals to assist in sale of the mortgaged real estate, what procedure should apply to their retention and how may they be compensated?*
2. *May a sale by the receiver have the effect of a foreclosure sale (e.g., extinguishing the mortgagor's right of redemption and subordinate liens), or would any such a sale be subject to all existing interests?*
3. *May the receiver sell the property free and clear of all liens (including senior liens)? If so, may the receiver sell over the objection of secured creditors (such as non-petitioning mortgagees)?*
4. *How may the receiver conduct such a sale (e.g., public sale or private sale) and what procedures should govern such sales (including procedures to establish the finality of the sale)?*
 - a. *In the event of a public sale, shall the mortgagee that obtained the appointment of a receiver have the ability to credit bid? Shall other secured creditors?*
 - b. *Should the court or the market determine the value of the mortgagee's secured claim?*

3. Does the receiver have the power to improve the real estate and to borrow funds needed for improvements and/or necessary maintenance? As noted by Miller & Starr, California Real Estate § 33:14, at 34-35 (3d ed. 2009):

The receiver lacks authority to perform improvements without court authorization. If the receiver does so, the receivership estate may be charged for the improper or unreasonable expenditure.⁸ However, if authorized by the court, the receiver can perform those improvements which are reasonable and necessary for the operation of the property, or to correct substandard conditions.

This situation may arise in a number of circumstances, such as when a receiver is appointed to take possession of a project under construction but not yet completed, or a project that is complete but has fallen into substandard condition and requires major repairs.

Furthermore, where the subject property does not yet produce income (e.g., an uncompleted project) or produces insufficient income to provide for preservation and management of the property, the receivership estate may need to borrow funds to provide for the property's necessary preservation and management pending sale.

Most of the existing state statutes — even those that provide “default” powers for the receiver — do not explicitly address the receiver's authority to borrow or to make improvements to the receivership estate. At best, these statutes only address this implicitly, permitting the

⁸ See, e.g., *Aviation Brake Systems, Ltd. v. Voorhis*, 133 Cal. App. 3d 230, 183 Cal. Rptr. 766 (1982) (receiver may be personally surcharged for misconduct or mismanagement).

receiver to perform “such acts respecting the property as the court may authorize.” Idaho Code § 8-605. See also Ariz. R. Civ. Proc. 66(c)(1); Cal. Code Civ. Proc. § 568; Ind. Code § 32-30-5-7; Iowa Code Ann. § 680.4; Ky. Rev. Stat. § 425.600(2); Mich. Comp. Laws Ann. § 600.2927(2); Mont. Code Ann. § 27-20-302; N.D. Cent. Code § 32-10-04; Ohio Rev. Code § 2735.04; Okla. Stat. tit. 12, § 1554; S.D. Codif. Laws § 21-21-9; Tex. Civ. Prac. & Rem. Code §§ 64.031, 64.033; Utah R. Civ. Proc. § 66(e); Wyo. Stat. Ann. § 1-33-104.

A few statutes provide more explicit guidance:

- N.M. Rev. Stat. Ann. § 44-8-7(H), (I) (receiver may, “subject to prior order of the district court ... borrow money for the receivership estate” and “exercise any other powers expressly granted by statute or an order of the district court”)
- Minn. Stat. Ann. § 576.44:

(a) Without necessity of a court order, the receiver may obtain unsecured credit and incur unsecured debt on behalf of the receivership, and the amounts shall be allowable as expenses of the receivership under section 576.51, subdivision 1, clause (2).

(b) Without necessity of a court order, the receiver may obtain secured financing on behalf of the receivership from any secured party under a financing facility existing at the time of the appointment.

(c) The court may authorize the receiver to obtain credit or incur indebtedness, and the court may authorize the receiver to mortgage, pledge, hypothecate, or otherwise encumber receivership property as security for repayment of any indebtedness.

- Minn. Stat. Ann. § 576.29(b)(5) (“[A] general receiver shall have the power ... if authorized by an order of the court following notice and a hearing, to use, **improve**, sell, or lease receivership property other than in the ordinary course of business”) (emphasis added)
- Wash. Rev. Code Ann. § 7.60.140:

(1) If a receiver is authorized to operate the business of a person or manage a person's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under RCW 7.60.230(1)(a) as an administrative expense of the receiver without order of the court.

(2) The court, after notice and a hearing, may authorize a receiver to obtain credit or incur indebtedness other than in the ordinary course of business. The court may allow the receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as security for repayment of any indebtedness that the receiver may incur.

- In California, practice involves the use of receivership certificates issued by the receiver with court authorization as security for funds loaned to the receivership estate. As Miller & Starr explain:

With court authorization, a receiver may be authorized to issue receivership certificates as security for cash loaned to the receivership estate. Receivership certificates are then issued as evidence of the indebtedness and become liens on the subject property when issued under the direction and control of the court, usually with priority over all other liens, including preexisting liens. Whether receiver's certificates should be issued, and whether those certificates when issued should be given priority over other indebtedness already of record against the property, are decisions which rest largely in the discretion of the court. [citing *Title Ins. & Trust Co. v. California Dev. Co.*, 171 Cal. 227, 152 P. 564 (1915)]

Miller & Starr, *California Real Estate* § 33:12, at 31 (3d ed. 2009).

Questions for the Committee:

- *May the receiver improve the mortgaged real estate, or is the receiver limited to mere preservation of the existing real estate?*
- *May the receiver borrow funds as needed for the maintenance, renovation, or completion of the mortgaged property, or is the receiver limited only to expenditure of rents or other sums collected during the receivership?*
- *If receiver does borrow funds, can the receiver grant a lien to secure such borrowings, and what priority does such a lien have vis-à-vis existing liens?*

4. Does/to what extent should the receiver have the power to employ professionals to assist the receiver in carrying out its obligations?

Most state statutes do not explicitly address the receiver's power to employ professionals such as attorneys, accountants, brokers, and/or property managers. In those states that do create statutory "default" powers, employment of such professionals would have to be explicitly authorized by the court. See, e.g., Idaho Code § 8-605 (receiver may perform "such acts respecting the property as the court may authorize").

A few states have explicit provisions regarding the authority/power of a receiver to employ professionals to assist in conducting the receiver's duties and pay compensation to those professionals. Representative statutes:

- Ark. R. Civ. Proc. 66(c) ("Subject to the approval of the court, the receiver shall have the power to employ an attorney, an accountant or such other persons as may be necessary to conduct the business or affairs entrusted to the receiver. The wages or fees paid by the receiver shall be paid as an expense from the assets collected by him.")
- Mass R. Civ. Proc. 66(d) ("When an attorney at law has been appointed a receiver, no attorney shall be employed by the receiver or receivers except upon order of court, which

shall be made only upon the petition of a receiver, stating the name of the attorney whom he desires to employ and showing the necessity of such employment.”)

- Minn. Stat. Ann. § 576.32:

Subdivision 1. Employment.

(a) To represent or assist the receiver in carrying out the receiver's duties, the receiver may employ attorneys, accountants, appraisers, auctioneers, and other professionals that do not hold or represent an interest adverse to the receivership.

(b) This section does not require prior court approval for the retention of professionals. However, any professional to be retained shall provide the receiver with a disclosure of any potential conflicts of interest, and the professional or the receiver shall file with the court a notice of the retention and of the proposed compensation. Any party in interest may bring a motion for disapproval of any retention within 21 days after the filing of the notice of retention.

(c) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with the receiver, respondent, a creditor, or other party in interest if the court determines that the employment is appropriate.

Subdivision 2. Compensation.

(a) The receiver and any professional retained by the receiver shall be paid by the receiver from the receivership property in the same manner as other expenses of administration and without separate orders, but subject to the procedures, safeguards, and reporting that the court may order.

(b) Except to the extent fees and expenses have been approved by the court, or as to parties in interest who are deemed to have waived the right to object, any interim payments of fees and expenses to the receiver are subject to approval in connection with the receiver's final report pursuant to section 576.38.

- N.M. Rev. Stat. Ann. § 44-8-7(H) (“Unless otherwise ordered by the district court, a person who acts as a receiver shall ... subject to prior order of the district court, engage and retain attorneys, accountants, brokers or any other persons and pay their compensation or fees”)
- R.I. R. Civ. Proc. 66(c) (“A receiver may employ such counsel as may be approved by the court upon written application by the receiver after such notice as the court may in its discretion require; provided, however, that except for cause shown the court will not approve the employment (a) of counsel by a receiver when the counsel himself or herself is a member of the Rhode Island bar or (b) of more than one attorney or firm as counsel even though there be more than one receiver.”)

- Wash. Code Rev. Ann. § 7.60.180:

(1) The receiver, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the estate to represent or assist the receiver in carrying out the receiver's duties.

(2) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with a creditor or other party in interest, if the relationship is disclosed in the application for the person's employment and if the court determines that there is no actual conflict of interest or inappropriate appearance of a conflict.

(3) This section does not preclude the court from authorizing the receiver to act as attorney or accountant if the authorization is in the best interests of the estate.

(4) The receiver, and any professionals employed by the receiver, is permitted to file an itemized billing statement with the court indicating both the time spent, billing rates of all who perform work to be compensated, and a detailed list of expenses and serve copies on any person who has been joined as a party in the action, or any person requesting the same, advising that unless objections are filed with the court, the receiver may make the payments specified in the notice. If an objection is filed, the receiver or professional whose compensation is affected may request the court to hold a hearing on the objection on five days' notice to the persons who have filed objections. If the receiver is a custodial receiver appointed in aid of foreclosure, payment of fees and expenses may be allowed upon the stipulation of any creditor holding a security interest in the property for whose benefit the receiver is appointed.

5. May the receiver enter into new leases or other executory contracts? If so, may the terms of such leases or other executory contracts extend beyond the anticipated duration of the receivership?

Restatement (Third) of Property — Mortgages § 4.3(c) provides that the receiver “has the authority “to preserve the real estate, to collect rents ... [and] to enter into, enforce, and terminate leases for the purpose of generating rental income”

While many state statutes do not specifically address a receiver’s ability to lease the property, the power to do so would typically be specified in the receivership order, thus providing the receiver clear authority. Likewise, those statutes that authorize the receiver to “make transfers” of the subject property might readily be understood to authorize the receiver to enter leases for the purpose of producing income. See, e.g., Cal. Code Civ. Proc. § 568; Idaho Code § 8-605; Mont. Code Ann. § 27-20-302; N.D. Cent. Code § 32-10-04; Ohio Rev. Code § 2735.04; Okla. Stat. tit. 12, § 1554; S.D. Codif. Laws § 21-21-9; Tex. Civ. Prac. & Rem. Code §§ 64.031, 64.033; Utah R. Civ. Proc. § 66(e); Wyo. Stat. Ann. § 1-33-104.

A few statutes provide more specific guidance:

- N.M. Rev. Stat. Ann. § 44-8-7 (“Unless otherwise ordered by the district court, a person who acts as a receiver shall ... D. enter into contracts reasonably necessary to operate, maintain and preserve the receivership estate ... [and] F. lease assets of the receivership estate in accordance with the powers and limitations contained in the original order of appointment....”)
- Minn. Stat. Ann. § 576.29(4) (“[A] general receiver shall have the power ... to operate any business constituting receivership property in the ordinary course of the business, including the use, sale, or lease of property of the business or otherwise constituting receivership property”); § 576.29(5) (“[A] general receiver shall have the power ... if authorized by an order of the court following notice and a hearing, to use, improve, sell, or lease receivership property other than in the ordinary course of business”)
- Wash. Rev. Code Ann. § 7.60.060(1)(b) (“A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order: ... (b) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of any person, to do all things which the owner of the business or property might do in the ordinary course of the operation of the business as a going concern”)

6. Does/to what extent should the receiver have the ability to reject existing leases or other executory contracts? Does/to what extent should the receiver have the ability to assume and assign existing leases or executory contracts? Potentially, a receiver’s ability to fulfill its duty to preserve the subject property and its value could be enhanced to the extent that the receiver had the ability to reject existing leases that were unfavorable. Theoretically, this could enable the receiver to terminate an existing lease that bore a now-below-market rent and instead re-lease the property (to the same tenant or another tenant) at a prevailing market rent.

At common law, the ability of a receiver to terminate (or “disaffirm”) existing leases varied depending upon two factors: (1) whether the jurisdiction followed the “title theory” or “lien theory” of mortgage law and (2) whether the lease in question was prior to the mortgage or subordinate to the mortgage. See generally G. Nelson & D. Whitman, Real Estate Finance Law §§ 4.37-4.39. These traditional common law distinctions have become less significant in the commercial setting, where nearly all commercial mortgage loans involve (a) the execution of detailed an assignment of rents and leases (which provide the assignee with control or consent rights over leases) and (b) the contractual subordination of existing leases to a new mortgage loan.

The Restatement (Third) of Property — Mortgages § 4.4 provides only a limited ability for the receiver to disaffirm existing leases. It provides:

- (a) Except as provided in Subsections (b) and (c) of this section, the appointment of a receiver confers no authority on the receiver to disaffirm a lease in existence at the time of the appointment.

(b) A receiver may disaffirm any lease or related agreement between the mortgagor and a tenant that contravenes a provision of a prior recorded mortgage.

(c) A receiver may disaffirm any lease or related agreement between the mortgagor and a tenant, made while the mortgagor is in default under the mortgage, that was not commercially reasonable when it was consummated.

This would permit the receiver to disaffirm, for example, a lease that the mortgagor entered into in violation of a provision in an assignment of rents and leases, or a below-market rent lease entered into by the mortgagor after default on the mortgage.

Only the Minnesota and Washington statutes provide any meaningful statutory provisions regarding the ability of a receiver to reject, assume, or assign existing leases or executory contracts. The Washington statute (Minnesota's is substantially identical) provides as follows:

§ 7.60.130. Executory contracts and unexpired leases

(1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7.60.210 within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a case is entitled to receive from the receiver any deed or any other instrument of conveyance which the person over whose property the receiver is appointed is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real

property who elects to treat rejection of an executory contract as a termination has a lien against the interest in that real property of the person over whose property the receiver is appointed for the recovery of any portion of the purchase price that the purchaser has paid.

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption or as otherwise ordered by the court for good cause shown.

(8) Nothing in this chapter affects the enforceability of antiassignment prohibitions provided under contract or applicable law.

As discussed earlier, the Washington statute draws a distinction between a “general receivership” and a “custodial receivership,” with the foreclosing mortgagee being entitled to the appointment of a custodial receivership (although the court has the ability to convert a custodial receivership to a general receivership). Wash. Code Rev. Ann. § 7.60.015. As a result, a purely custodial receiver would lack the power to reject unexpired leases.

7. To what extent may the receiver commence, prosecute, and defend legal proceedings relating to the mortgaged real estate, or settle such pending/threatened proceedings?
Generally speaking, whether authorized by statute or the order of appointment, the receiver has the ability to sue and be sued in its own name, and to settle pending or threatened legal proceedings.

Statutes in a number of states confirm the receivers ability to sue and be sued in its own name, as well as to settle or compromise claims. Representative statutes:

- Ariz. R. Civ. Proc. 66(c)(1) (“The receiver may, subject to control of the court, commence and defend actions.”)
- Cal. Code Civ. Proc. § 568 (“The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same....”)
- Idaho Code § 8-605 (same)
- Ind. Code § 32-30-5-7(1) (“The receiver may, under control of the court or the judge ... bring and defend actions”)
- Iowa Code Ann. § 680.4 (same)
- Ky. Rev. Stat. § 425.600(2) (same)
- Minn. Stat. Ann. § 576.29, subd. 1(a)(3) (“A receiver, whether general or limited, shall have ... the power to assert rights, claims, causes of action, or defenses that relate to receivership property....”)
- Minn. Stat. Ann. § 576.29, subd. 1(b)(1) (“[A] general receiver shall have the power to (i) assert any rights, claims, causes of action, or defenses of the respondent to the extent any rights, claims, causes of action, or defenses are receivership property; (ii) maintain in the receiver’s name or in the name of the respondent any action to enforce any right, claim, cause of action, or defense”)

- Minn. Stat. Ann. § 576.39, subd. 1 (“The receiver may sue in the receiver’s capacity and, subject to other sections of this chapter and all immunities provided at common law, may be sued in that capacity.”)
- Mont. Code Ann. § 27-20-302 (“The receiver has, under the control of the court, the power to ... bring and defend actions in the receiver’s own name, as receiver ... [and to] receive rents, collect debts, and compound for and compromise the rents and debts”)
- N.D. Cent. Code § 32-10-04 (same)
- Ohio Rev. Code § 2735.04 (same)
- Okla. Stat. tit. 12, § 1554 (same)
- S.D. Codif. Laws § 21-21-9 (same)
- Wyo. Stat. Ann. § 1-33-104 (same)
- Tex. Civ. Prac. & Rem. Code § 64.031 (same)
- Tex. Civ. Prac. & Rem. Code § 64.033 (“A receiver may bring suits in his official capacity without the permission of the appointing court.”)
- Tex. Civ. Prac. & Rem. Code § 64.052(a) (“A receiver who holds property in this state may be sued in his official capacity in a court of competent jurisdiction without permission of the appointing court.”)
- Utah R. Civ. Proc. 66(e) (“A receiver has, under the direction of the court, power to bring and defend actions ... [and] to collect, pay, and compromise debts”)
- N.Mex. Rev. Stat. Ann. § 44-8-7(G) (“Unless otherwise ordered by the district court, a person who acts as a receiver shall ... bring and defend actions in his capacity as receiver to maintain and preserve the receivership estate”)
- Wash. Rev. Code Ann. § 7.60.060(1)(c) (“A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order: ... [t]he power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or related to any property, to maintain in the receiver’s name or in the name of such a person any action to enforce any right, claim, or chose in action”)
- Wash. Rev. Code Ann. § 7.60.060(1)(e) (“[t]he power to assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant”)

8. *To what extent should a receiver be able to exercise avoiding powers?* The Committee should consider whether and/or to what extent the Model Act should contain provisions relating to a receiver’s power to avoid pre-receivership transfers. Certainly, to the extent that a general receivership (particularly one for an insolvent debtor) may function as a state law alternative to bankruptcy administration, one might expect administration of the receivership to involve the receiver’s ability to assert avoiding powers comparable to those that a bankruptcy trustee/debtor-in-possession would have.

Minn. Stat. Ann. § 576.30, subd. 1 provides that “[a]s of the time of appointment, the receiver shall have the powers and priority as if it were a creditor that obtained a judicial lien at the time of appointment ... on all of the receivership property, subject to satisfying the recording requirements as to real property described in subdivision 2 (which in turn authorizes the receiver to file a *lis pendens* in the public land records). This (in combination with the state’s recording statute) would appear to establish the priority of the receiver vis-à-vis other unrecorded or

recorded mortgages, so it is not clear that the statute would need to go further and provide for a “strong-arm” avoidance power akin to that provided in the federal bankruptcy code [11 U.S.C.A. § 544(a)]. Likewise, as to any personal property within the control of the receiver, this provision (in combination with Article 9’s priority rules) would establish the receiver’s priority vis-à-vis other perfected or unperfected secured parties.

Some state statutes governing assignments for the benefit of creditors provide the assignee with broader avoidance powers more analogous to those possessed by a bankruptcy trustee under federal law. For example, Cal. Code Civ. Proc. § 1800 provides an assignee for the benefit of creditors has the ability to avoid preferential transfers; the form and content of § 1800 is substantially similar to the provisions of Bankruptcy Code § 547. Ohio’s statute provides a much less detailed preference avoidance power under which a creditor seeking to avoid a preferential transfer can obtain the appointment of a receiver for the debtor’s assets. Ohio Rev. Code Ann. § 1313.56 (“In a suit brought by a creditor of such debtor for the purpose of declaring such sale void, a receiver may be appointed who shall take charge of all the assets of such debtor, including the property so sold, conveyed, transferred, mortgaged, or assigned, and also administer all the assets of the debtor for the equal benefit of the creditors of the debtor in proportion to the amount of their respective demands, including those which are unmatured.”).

Fraudulent transfer laws in most states (such as the Uniform Fraudulent Transfer Act) permit creditors that have been injured by transfers that were actually or constructively fraudulent to take action to invalidate such transfers.

9. *Should the Act include a model or form receivership order, in addition to providing substantive provisions governing the scope and extent of the receiver’s powers?*

I. Receivership Procedure/Operation

1. *Must a receivership be ancillary to some other legal proceeding, or may a receiver be appointed without any other pending action?* Traditionally, a receivership of mortgaged property is a remedy that is ancillary to some action to enforce either the mortgage debt or the mortgage lien. In states that recognize only judicial foreclosure, the existence of a judicial foreclosure proceeding provides the action to which a receivership may be ancillary. In states that authorize power of sale foreclosure, however, a mortgagee may choose to foreclose privately without any judicial proceeding. In these states, the lack of any pending action raises a concern about whether the mortgagee can obtain the “ancillary” remedy of a receivership.

The Uniform Assignment of Rents Act (enacted in Utah, Nevada, and New Mexico) addressed this concern by authorizing the assignee of rents to file an action for specific performance of the assignment of rents. The filing/pendency of this action would unquestionably provide a sufficient jurisdictional predicate for the appointment of a receiver, even if the assignee chose to proceed with its foreclosure by power of sale. UARA § 7(b)(2) and comment 1.

Many existing state receivership statutes provide that the court may appoint a receiver “in any action or proceeding,” Alaska Stat. § 09.40.240, suggesting that there must be a pending action to which the receivership would be ancillary remedy. See also, e.g., Cal. Code Civ. Proc.

§ 564(a) (“by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver”); Colo. R. Civ. Proc. 66(a) (“by the court in which the action is pending”); Colo. Rev. Stat. Ann. § 38-38-601 (“[w]hen an action or proceeding has been commenced to foreclose a mortgage, trust deed, or other instrument securing an indebtedness”); Ga. Code Ann. § 9-8-1 (“[w]hen any fund or property is in litigation”); Idaho Code § 8-601 (“by the court in which an action is pending or has passed to judgment”); Ind. Code § 32-30-5-1(4) (“[i]n actions in which a mortgagee seeks to foreclose a mortgage”); Iowa Code Ann. § 680.1 (“[o]n the petition of either party to a civil action or proceeding”); Kan. Stat. Ann. § 60-1301 (“pending the determination of any proceeding in which such property or interest may be affected by the final judgment”); Ky. Rev. Stat. § 425.600(1) (“[o]n the motion of any party to an action”); Mich. Comp. Laws Ann. § 600.2926 (“in all cases pending where appointment is allowed by law”); Mont. Code Ann. § 27-20-102 (“by the court in which an action is pending”); N.D. Cent. Code § 32-10-01 (same); Ohio Rev. Code § 2735.01 (“in causes pending in such courts”); Ore. R. Civ. Proc. 80A (“during the pendency of a civil action our upon a judgment or order therein”); S.D. Codif. Laws § 21-21-2 (“in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property”); Tex. Civ. Prac. & Rem. Code § 64.001(a)(4) (same); W.Va. Code § 53-6-1 (“in any proper case pending” in a court of equity)

A few states, however, have provided that the court may appoint a receiver without regard to whether there is a separate pending action. See, e.g., Ariz. Rev. Stat. § 12-1241 (“The superior court or a judge thereof may appoint a receiver to protect and preserve property or the right of parties therein, even if the action includes no other claim for relief.”); Minn. Stat. Ann. § 576.25, subd. 1 (“A receiver may be appointed under this chapter whether or not the motion for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment.”).

A few power of sale foreclosure states specifically authorize the appointment of a receiver in the context of a nonjudicial foreclosure. See, e.g., Neb. Rev. Stat. § 25-1081(3) (receiver may be appointed “in connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default”); Okla. Stat. tit. 12, § 1551(2) (“in connection with a mortgagee foreclosing his mortgage by power of sale under the Oklahoma Power of Sale Mortgage Foreclosure Act”); Wash. Rev. Code Ann. § 7.60.025(1)(b) (“after commencement of [a] nonjudicial proceeding to foreclose upon any lien against ... real or personal property”).

Wyoming’s statute authorizes the appointment in “actions or cases” involving mortgage foreclosure, suggesting that the mortgagee may be able to petition directly for a receivership when pursuing a nonjudicial foreclosure. Wyo. Stat. Ann. § 1-33-101(a)(iv).

2. Is a receivership an “action” for the purpose of a state’s “one-action” rule? Some states have enacted “one action” rules. See, e.g., Cal. Code Civ. Proc. § 726(a) (“There can be but one form of action for the recovery of any debt for the enforcement of any right secured by mortgage upon real property....”); see also Idaho Code § 6-101; Mont. Code Ann. § 71-1-222; Nev. Rev. Stat. § 40.430; Utah Code Ann. § 78-37-1. As explained by G. Nelson & D. Whitman, Real Estate Finance Law § 8.2, at 937-938:

This rule means, in general, that in the event of a default, the mortgagee's sole remedy is a foreclosure action and that any deficiency claim must be sought in that proceeding. The purpose of this rule is two-fold. One is to protect the mortgagor against multiplicity of actions when the separate actions, though theoretically distinct, are so closely connected that normally they can and should be decided in one suit. The other is to compel a creditor who has taken a mortgage on land to exhaust the security before attempting to reach any unmortgaged property to satisfy the claim. The mortgagee, under these provisions, cannot disregard the security even if it wishes to do so, and sue upon the note or debt.

If the mortgagee in a "one-action" state sues for a judgment on the note before foreclosing the mortgage, the mortgagor may assert the one-action rule "as a sanction against the mortgagee on the basis that the latter by not foreclosing on the security in the action brought to enforce the debt, has made an election of remedies and waived the security." *Walker v. Community Bank*, 10 Cal.3d 729, 518 P.2d 329 (1974).

Both the California receivership statute and the Uniform Assignment of Rents Act make clear that the lender's motion to seek appointment of a receiver and the appointment of that receiver does not constitute an "action" for the purpose of a one-action rule, thereby resulting in any argument that by seeking a receiver, the mortgagee had waived its security. See, e.g., Cal. Code Civ. Proc. § 564(d) ("Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726."); UARA § 11(6) ("The enforcement of an assignment of rents by [appointment of a receiver] ... does not ... violate [cite the "one-action" statute of this state]").

3. Can the applicant obtain appointment on an *ex parte* basis, and under what circumstances? Many receivership clauses purport to permit the mortgagee to obtain a receiver on an *ex parte* basis, without notice to the assignor. Under existing Supreme Court precedent, the appointment of a receiver on an *ex parte* basis likely satisfies due process requirements as long as the property owner has a prompt opportunity for a post-appointment hearing at which the owner can be heard regarding whether appointment of the receiver was appropriate. See, e.g., *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974) (upholding constitutionality of Louisiana statute permitting *ex parte* sequestration of chattels where procedure provided defendant with post-seizure hearing and dissolution of writ if plaintiff failed to establish adequate grounds for its issuance).

In its receivership provisions, UARA left to other state law the question of whether (and in what circumstances) *ex parte* appointment of a receiver was appropriate. UARA § 7, cmt. 7.

Some states prohibit *ex parte* appointment of a receiver. Neb. Rev. Stat. § 25-1089 ("Every order appointing a receiver without the notice provided for herein shall be void"); W.Va. Code § 53-6-1 ("no such receiver shall be appointed of any real estate, or of the rents, issues and profits thereof, until reasonable notice of the application therefor has been given to the owner or tenant thereof"). Ore. R. Civ. Proc. 60C requires five days' prior notice of the application, "unless a different period is fixed by order of the court." This language would appear to permit the court to shorten or lengthen the period, but not to eliminate notice altogether. See also, e.g., S.C. Code § 15-65-20 (at least four days' notice of the application required, although court can

“prescribe a shorter time”); Wash. Rev. Code Ann. § 7.60.025(3) (seven days’ notice required; court may “shorten or expand the period for notice ... upon good cause shown”).

Many states explicitly permit the applicant to seek a receivership on an ex parte basis. See, e.g., Ariz. R. Civ. Proc. 66(a); Cal. Rules of Court Rule 3.1176(a); Colo. R. Civ. Proc. 66(d)(3); Ga. Code Ann. § 9-8-3 (“[u]nder extraordinary circumstances”); Idaho Code § 8-603; Ind. Code § 32-30-5-9 (“upon sufficient cause shown by affidavit”); Minn. Stat. Ann. § 576.25, subd. 7 (“if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver”); Miss. Code Ann. § 11-5-153 (notice required “unless it shall appear that an immediate appointment is necessary, or good cause be shown for not giving notice”); Mont. Code Ann. § 27-20-203; N.D. Cent. Code § 32-10-02; R.I. R. Civ. Proc. 66(b) (only upon “showing in writing by the applicant under oath, accompanied by the certificate of the applicant’s attorney, satisfactory to the court, that the application is made in good faith for the protection of a business property or assets affected by such appointment; that facts be set forth justifying the appointment of a receiver and that the appointment of a temporary receiver is desirable to protect the status quo pending final hearing for the appointment of a receiver”); S.D. Codif. Laws § 21-21-6; Va. Code § 8.01-592 (“those cases in which an emergency exists and it is necessary that a receiver be immediately appointed to preserve the subject matter”).

New Mexico’s statute permits ex parte appointment, but requires that the application recite “specific facts shown by affidavit ... that immediate and irreparable injury, loss or damage will result to the applicant or others before the adverse party’s attorney can be heard in opposition” and also requires that the applicant’s attorney certify to the court, in writing, “the efforts, if any, that have been made to give the notice and the reasons supporting the attorney’s claim that notice should not be required.” N.M. Rev. Stat. Ann. § 44-8-5(C).

New York’s statute provides that “[w]here the action is for the foreclosure of a mortgage providing that a receiver may be appointed without notice, notice of a motion for such appointment shall not be required.” N.Y. Real Prop. Act. & Proc. § 1325(1).

Bonding on ex parte application. Some of the statutes require the applicant to post a bond if the application is being made on an ex parte basis, to protect the defendant against damages that might result if the receivership is later adjudged to have been improvidently granted. Ariz. R. Civ. Proc. 66(a); Cal. Code Civ. Proc. § 566(b); Idaho Code § 8-603; Miss. Code Ann. § 11-5-155. The Illinois statute provides that the applicant need not post such a bond when “for good cause shown, and upon notice and full hearing, the court is of the opinion that a receiver ought to be appointed without such bond.” 735 Ill. Comp. Stat. 5/2-415(a).

Other states do not mandate that the applicant post a bond in all cases, but give the court the ***discretion*** to require a bond from the ex parte applicant. Mont. Code Ann. § 27-20-203; N.D. Cent. Code § 32-10-02; S.D. Codif. Laws § 21-21-6.

4. What ministerial duties (providing of notices and filing of reports) does the receiver have during the receivership?

In most instances, the receiver’s duties with respect to (1) providing notices to creditors and (2) the nature, scope and frequency of reports to the appointing court should be specified in the

receivership order. In the absence of a standard receivership order, however, these duties may vary from receivership to receivership depending upon a state statute's "default" provisions.

Many states have no such specific provisions, merely requiring the receiver to "perform such acts respecting the property or business as the judge may authorize." See, e.g., Kan. Stat. Ann. § 60-1303. See also W.Va. Code § 53-6-3 ("Any special receiver shall render an account of the funds or property of which he is receiver when ordered to do so by the court").

Notice to creditors. Only a few state statutes explicitly impose notification requirements in all receiverships. Some of these apply only to general receiverships rather than special, limited, or custodial receiverships.

- Minn. Stat. Ann. § 576.34 ("In a general receivership, unless the court orders otherwise, the receiver shall give notice of the receivership to all creditors and other parties in interest actually known to the receiver by mail or other means of transmission within 21 days after the time of appointment. The notice of the receivership shall include the time of appointment and the names and addresses of the respondent, the receiver, and the receiver's attorney, if any.")
- Ore. R. Civ. Proc. 80E ("A general receiver ... shall under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the receiver's attorney, or the clerk of the court, within such time as the court directs.")
- Va. Code § 8.01-595 ("When a receiver has been appointed he shall immediately prepare or cause to be prepared a list of all creditors, lien and general, of the person, firm, corporation or of any other legal or commercial entity for which he is a receiver; and the court may by proper order compel any defendant for whom a receiver is appointed, or any officer of the corporation or of any other legal or commercial entity for whom the receiver is appointed, to furnish or deliver to the receiver a list, duly sworn to, of all creditors, lien or general, together with their addresses if known. The receiver shall then promptly notify by mail each creditor whose name and address has been ascertained of the appointment of the receiver.")
- Wash. Rev. Code Ann. § 7.60.090(2) ("[W]ithin 35 days after the date of appointment of a general receiver, the receiver shall file ... a true list of all of the known creditors and applicable regulatory and taxing agencies of the person over whose assets the receiver is appointed, their mailing addresses, the amount and nature of their claims, and whether the claims are disputed"). [This list must be in substantial compliance with a statutory form which appears in Appendix, p. ____.]
- Wyo. Stat. Ann. § 1-33-108 ("Within thirty (30) days after a receiver is appointed and qualified, if the court so orders, the receiver shall publish for three (3) weeks in a newspaper of the county in which he is appointed a notice that he is appointed receiver, stating the date of the appointment and requiring all persons having claims against the

person, company, corporation or partnership for which the receiver is appointed to exhibit their claims to the receiver within four (4) months from the date of the first publication of the notice, and if the claims are not exhibited within the four (4) months they are forever barred from participation in the assets of the receivership.”)

Reporting. A few states have explicit statutory guidance regarding a receiver’s obligation to provide interim reporting. [Discussion of the receiver’s final report is deferred to discussion of termination of the receivership, *infra* p. 54.] Representative examples of state statutory reporting requirements include:

- **Arkansas.** Ark. R. Civ. Proc. 66(b) (“The receiver shall make a report of his proceedings and actions every six (6) months or at such other times as directed by the court. All moneys or property collected by the receiver shall be accounted for and deposited into court or otherwise be subject to the orders of the court.”)
- **California.** Within 30 days after appointment or such further time as may be permitted by the court, the receiver must file an inventory containing a complete and detailed list of property taken into its possession. Cal. Rules of Court, Rule 3.1181(a). The receiver must file monthly reports to the parties and, if requested, to nonparty lienholders, but does not have to file them with the court unless the court so orders. Cal. Rules of Court, Rule 3.1182. These reports must include (1) a narrative report of events; (2) a financial report; and (3) a statement of all fees paid to the receiver, employees, and professionals showing (i) itemized services; (ii) a breakdown of the services by one-tenth hour increments; (iii) if the fees are hourly, the hourly fee; and (iv) if the fees are on another basis, that basis.
- **Florida.** Fla. R. Civ. Proc. 1.620(b) (“Every receiver shall file in the clerk's office a true and complete inventory under oath of the property coming under the receiver's control or possession under the receiver's appointment within 20 days after appointment. Every 3 months unless the court otherwise orders, the receiver shall file in the same office an inventory and account under oath of any additional property or effects which the receiver has discovered or which shall have come to the receiver's hands since appointment, and of the amount remaining in the hands of or invested by the receiver, and of the manner in which the same is secured or invested, stating the balance due from or to the receiver at the time of rendering the last account and the receipts and expenditures since that time.”)
- **Indiana.** Indiana’s statute requires reporting within the time fixed by the court, and requires a hearing prior to approval, although publication of the notice of hearing is not required if the receivership is ancillary to a mortgage foreclosure.

§ 32-30-5-14. Filing of account or report required. In all receiverships pending or begun in any court, the receiver, within the time as may be fixed by an order of the court in which the receivership is pending, shall file with the court an account or report in partial or final settlement of the liquidation or receivership proceedings.

§ 32-30-5-15. Contents of account or report. The account or report required by section 14 of this chapter must set forth all:

- (1) receipts and disbursements to the date of the accounting; and
- (2) other appropriate information relative to the:
 - (A) administration of the receivership;
 - (B) liquidation of the receivership; and
 - (C) declaration and payment of dividends.

§ 32-30-5-16. Petition for order requiring filing of account. If an account is not filed within one (1) year after the date when the receiver took possession of the assets and effects of the receivership, any party interested may petition the court for an order requiring the filing of an account.

§ 32-30-5-17. Notice of hearing on account or report

(a) Except as provided in subsection (d), upon the filing of an account or report, the clerk of the court in which the receivership is pending shall give notice of the date on which the account or report is to be heard and determined by the court.

(b) The clerk shall give the notice required by subsection (a) by publication, once each week for three (3) successive weeks in two (2) newspapers of general circulation published or circulated within the county.

(c) The date in the notice on which the account or report is to be heard and determined by the court shall be fixed not less than thirty (30) days after the date of the filing of the account or report.

(d) Publication is not required under this section if the receivership is ancillary to a mortgage foreclosure.

§ 32-30-5-18. Objections or exceptions

(a) During the thirty (30) day period referred to in section 17 of this chapter, any creditor, shareholder, or other interested party may file objections or exceptions in writing to the account or report.

(b) Any objections or exceptions to the matters and things contained in an account or report and to the receiver's acts reported in the report or account that are not filed within the thirty (30) day period referred to in section 17 of this chapter are forever barred for all purposes.

§ 32-30-5-19. Hearing on account or report. At the expiration of the thirty (30) day period referred to in section 17 of this chapter, the court shall, without delay:

- (1) proceed with the hearing and determination of the objections or exceptions;
- (2) pass upon the account or report;
- (3) order the payment of a partial or final dividend; and
- (4) make other appropriate orders.

§ 32-30-5-20. Approval of partial account or report. The court's approval of a receiver's partial account or report, as provided in section 14 of this chapter, releases and discharges the receiver and the surety on the receiver's bond for all matters and things related to or contained in the partial account or report.

- **Massachusetts.** Mass. R. Civ. Proc. 66(b) (“Every receiver, within thirty days after his appointment, shall file a detailed inventory of the property of which he has possession or the right to possession, with the estimated values thereof, together with a list of the encumbrances thereon; and also a list of the creditors of the receivership and of the party whose property is in the hands of the receiver, so far as known to him.”); Mass. R. Civ. Proc. 66(c) (“Every receiver shall file, not later than the fifteenth day of February of each year, a detailed account under oath of his receivership to and including the last day of the preceding year, substantially in the form required for an account by a conservator in the probate courts, together with a report of the condition of the receivership. He shall also file such further accounts and reports as the court may order.”)
- **Minnesota.** Minn. Stat. Ann. § 576.36, subd. 2 provides:
 - (a) The court may order the receiver to prepare and file interim reports addressing: (1) the activities of the receiver since the last report; (2) cash receipts and disbursements, including payments made to professionals retained by the receiver; (3) receipts and dispositions of receivership property; and (4) other matters.
 - (b) The order may provide for the delivery of the receiver’s interim reports to persons on the master service list and to other persons and may provide a procedure for objection to the interim reports, and may also provide that the failure to object constitutes a waiver of objection to matters addressed in the interim reports.
- **Oregon.** Ore. R. Civ. Proc. 80D(2)-(4) provides that:

Every order or judgment appointing a receiver: ...

 - (2) shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, and (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;
 - (3) shall, when a general receiver is appointed to liquidate and wind up affairs, set a time within which creditors and claimants shall file their claims or be barred; and
 - (4) may require periodic reports from the receiver.
- **Rhode Island.** R.I. R. Civ. Proc. 60(e) provides in pertinent part that “[r]eports shall be filed in court by the receiver, unless otherwise ordered, each thirty (30) days, setting forth the financial condition of the receivership and, in case the receiver is operating a business, the receiver’s recommendations as to its further continuance, and, if the receiver is not operating a business, the receiver’s recommendations as to the disposition of the assets.”

- **Texas.** Tex. Civ. Prac. & Rem. Code § 64.032 provides that “[a]s soon as possible after appointment, a receiver shall return to the appointing court an inventory of all property received.”
- **Washington.** Washington requires that within 35 days after appointment, a general receiver shall prepare “a true list of all property of the estate identifiable by the receiver, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.” Wash. Rev. Code Ann. § 7.60.090(2). The inventory must be in substantial compliance with a statutory form. See Appendix, pp. 96-97.

Wash. Rev. Code Ann. § 7.60.100 also requires a general receiver to prepare monthly reports, unless otherwise ordered by the court. By contrast, a custodial receiver has no periodic reporting requirement unless ordered by the court:

A general receiver shall file with the court a monthly report of the receiver's operations and financial affairs unless otherwise ordered by the court. Except as otherwise ordered by the court, each report of a general receiver shall be due by the last day of the subsequent month and shall include the following:

- (1) A balance sheet;
- (2) A statement of income and expenses;
- (3) A statement of cash receipts and disbursements;
- (4) A statement of accrued accounts receivable of the receiver. The statement shall disclose amounts considered to be uncollectable;
- (5) A statement of accounts payable of the receiver, including professional fees. The statement shall list the name of each creditor and the amounts owing and remaining unpaid over thirty days; and
- (6) A tax disclosure statement, which shall list postfiling taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make payments or deposits.

A custodial receiver shall file with the court all such reports the court may require.

5. *Should the Act address the ability of general creditors to file claims and receive distributions from the receivership estate? If so, what procedures should the Act provide?* In general equity receiverships (more analogous to modern bankruptcies), an existing statute or the receivership order establishes a process for the filing and resolution of creditor claims and the distribution of net revenues collected by the receiver. By contrast, in most custodial receiverships, all net revenues collected by a custodial receiver for mortgaged real estate end up being applied to reduce the mortgage debt.

If the Committee determines that the Act should include the ability of the receiver to function as a general receiver for the debtor, the Committee should look to incorporate appropriate provisions for the filing, determination, and payment of claims. The only two comprehensive statutory models are found in the Washington and Minnesota statutes. This memo includes

excerpts from the Minnesota statute. The comparable Washington provisions can be found in the Appendix at pp. 105-109.

§ 576.49. Claims process

Subdivision 1. Recommendation of receiver. In a general receivership, and in a limited receivership if the circumstances require, the receiver shall submit to the court a recommendation concerning a claims process appropriate to the particular receivership.

Subdivision 2. Order establishing process. In a general receivership and, if the court orders, in a limited receivership, the court shall establish the claims process to be followed in the receivership addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place where the proofs of claim must be submitted, the deadline or deadlines for submitting the proofs of claim, and other matters bearing on the claims process.

Subdivision 3. Alternative procedures. The court may authorize proofs of claim to be filed with the receiver rather than the court. The court may authorize the receiver to treat claims as allowed claims based on the amounts established in the books and records of the respondent or the schedule of claims filed pursuant to section 576.33, without necessity of formal proofs of claim.

§ 576.50. Objection to and allowance of claims

Subdivision 1. Objections and allowance. The receiver or any party in interest may file a motion objecting to a claim and stating the grounds for the objection. The court may order that a copy of the objection be served on the persons on the master service list at least 30 days prior to the hearing. Claims allowed by court order, and claims properly submitted and not disallowed by the court shall be allowed claims and shall be entitled to share in distributions of receivership property in accordance with the priorities provided by this chapter or otherwise by law.

Subdivision 2. Examination of claims. If the claims process does not require proofs of claim to be filed with the court, at any time after expiration of the claim-filing period and upon 14 days' written notice to the receiver, any party in interest shall have the right to examine:

- (1) all claims filed with the receiver; and
- (2) all books and records in the receiver's possession that provided the receiver the basis for concluding that creditors identified therein are entitled to participate in any distributions of receivership property without having to file claims.

Subdivision 3. Estimation of claims. For the purpose of allowance of claims, the court may estimate:

- (1) any contingent or unliquidated claim, the fixing or liquidation of which would unduly delay the administration of the receivership; or
- (2) any right to payment arising from a right to an equitable remedy.

§ 576.51. Priority of claims

Subdivision 1. Priorities. Allowed claims shall receive distribution under this chapter in the following order of priority and, except as set forth in clause (1), on a pro rata basis:

- (1) claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law,

subject first to reimbursing the receiver for the reasonable and necessary expenses of preserving, protecting, or disposing of the collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professionals;

(2) actual, necessary costs and expenses incurred during the receivership, other than those expenses allowable under clause (1), including allowed fees and reimbursement of reasonable expenses of the receiver and professionals employed by the receiver under section 576.32;

(3) claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within the 90 days before the time of appointment or the cessation of the respondent's business, whichever occurs first, but only to the extent of the dollar amount in effect in United States Code, title 11, section 507(4);

(4) allowed unsecured claims, to the extent of the dollar amount in effect in United States Code, title 11, section 507(7), for each individual, arising from the deposit with the respondent, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided;

(5) claims for arrears in amounts owing pursuant to a support order as defined in section 518A.26, subdivision 3;

(6) unsecured claims of governmental units for taxes that accrued before the time of appointment of the receiver;

(7) all other unsecured claims due as of the time of appointment, including the balance due the holders of secured claims to the extent not satisfied under clause (1); and

(8) interest pursuant to section 576.52.

Subdivision 2. Payments to respondent. If all of the amounts payable under subdivision 1 have been paid in full, any remaining receivership property shall be returned to the respondent.

§ 576.52. Interest on unsecured claims. To the extent that funds are available to pay holders of allowed unsecured claims in full or the amounts due as of the time of appointment, each holder shall also be entitled to receive interest, calculated from the time of appointment, at the rate set forth in the agreement evidencing the claim, or if no rate is provided, at the judgment rate that would be payable as of the time of appointment; provided however, that no holder shall be entitled to interest on that portion, if any, of its unsecured claim that is itself interest calculated from the time of appointment. If there are not sufficient funds in the receivership to pay in full the interest owed to all the holders, then the interest shall be paid pro rata.

§ 576.53. Distributions

Subdivision 1. Proposed distributions. Before any interim or final distribution is made, the receiver shall file a distribution schedule listing the proposed distributions. The distribution schedule may be filed at any time during the case or may be included in the final report.

Subdivision 2. Notice. The receiver shall give notice of the filing of the distribution schedule to all persons on the master mailing list or that have filed proofs of claim. If there is no objection within 21 days after the notice, the court may enter an order authorizing the

receiver to make the distributions described in the distribution schedule without the necessity of a hearing.

Subdivision 3. Other distributions. In the order appointing the receiver or in subsequent orders, the court may authorize distribution of receivership property to persons with ownership interests or liens.

6. *What procedure should the Act provide for the termination of the receivership, the discharge of the receiver, and the release of the receiver's bond?* The list below provides a sample of the statutory provisions and rules governing the termination of the receivership and the receiver's discharge:

- Ariz. R. Civ. Proc. 66(c)(3) (“A receivership may be terminated upon motion served with at least ten days’ notice upon all parties who have appeared in the proceedings. The court in the notice of hearing may require that a final account and report be filed and served, and may require the filing of written objections thereto. In the termination proceedings, the court shall take such evidence as is appropriate and shall make such order as is just concerning its termination, including all necessary orders on the fees and costs of the receivership.”)
- Under Cal. Rules of Court, Rule 3.1184, at the conclusion of the receivership, the receiver must file, by motion or stipulation, a final accounting with the court, a request for discharge, and a request for exoneration of its surety or sureties. If compensation is sought, the receiver must detail the services performed, and whether interim fees have been allowed and in what amounts. Judicial confirmation of the final account is a precondition to discharge of the receiver.
- Ind. Code § 32-30-5-14 requires the receiver to file a report in final settlement of the receivership within the time fixed by the court order. The report must contain the same information as set forth in an interim report. Ind. Code § 32-30-5-14 (see p. 125, *infra*). Publication of notice of hearing on the final report is required under Ind. Code § 32-30-5-17, unless the receivership is ancillary to a mortgage foreclosure. Creditors have 30 days to object in writing; any objects not filed within such period are thereafter barred. Ind. Code § 32-30-5-18. Following that 30 day period, the court shall proceed with the hearing, determine any objections, approve or reject the report, order the payment of a partial or final dividend, and make any other appropriate orders. Ind. Code § 32-30-5-19. The approval of the final report results in the discharge of the receiver and the receiver's surety bond, and the court shall declare the receivership closed subject to any party's right of appeal if they filed timely objections. Ind. Code § 32-30-5-21.
- Mass. R. Civ. Proc. 66(e) (“No order discharging a receiver from further responsibility will be entered until he has settled his final account.”)
- Mich. Comp. Laws Ann. § 600.2926 (“The court may terminate any receivership and return the property held by the receiver to the debtor whenever it appears to be to the best interest of the debtor, the creditors and others interested.”)

- Minnesota provides the following termination provision in Minn. Stat. Ann. § 576.38:

Subdivision 1. Termination of receivership. The court may discharge a receiver and terminate the receivership. If the court determines that the appointment of the receiver was procured in bad faith, the court may assess against the person who procured the receiver's appointment:

- (1) all of the receiver's fees and expenses and other costs of the receivership; and
- (2) any other sanctions the court deems appropriate.

Subdivision 2. Request for discharge. Upon distribution or disposition of all receivership property, or the completion of the receiver's duties, the receiver shall file a final report and shall request that the court approve the final report and discharge the receiver.

Subdivision 3. Contents of final report. The final report, which may incorporate by reference interim reports, shall include, in addition to any matters required by the court in the case:

- (1) a description of the activities of the receiver in the conduct of the receivership;
- (2) a schedule of all receivership property at the commencement of the receivership and any receivership property added thereafter;
- (3) a list of expenditures, including all payments to professionals retained by the receiver;
- (4) a list of any unpaid expenses incurred during the receivership;
- (5) a list of all dispositions of receivership property;
- (6) a list of all distributions made or proposed to be made; and
- (7) if not done separately, a motion or application for approval of the payment of fees and expenses of the receiver.

Subdivision 4. Notice of final report. The receiver shall give notice of the filing of the final report and request for discharge to all persons who have filed notices of appearance. If there is no objection within 21 days, the court may enter an order approving the final report and discharging the receiver without the necessity of a hearing.

Subdivision 5. Effect of discharge. A discharge removes all authority of the receiver, excuses the receiver from further performance of any duties, and discharges any lis pendens recorded by the receiver.

- N.M. Rev. Stat. Ann. § 44-8-9(E) (“Upon disposition of the action concerning the receivership estate, the district court shall enter an order that discharges the receiver from his duties and releases him from any claim or demand of any interested person. Upon the termination of the receiver's duties, the receiver shall prepare and file a final report and account of the receivership and serve it upon all parties who have entered an appearance. Any objections to the receiver's final account and report and claims to surcharge must be filed within ten days of service. Upon settlement of the receiver's final account and report, the district court shall enter an order discharging the receiver from all further duties, releasing him from any claim or demand of any interested person and exonerating any bond that the receiver has been required to post in connection with the receivership.”)
- Ore. R. Civ. Proc. 80G (“A receivership may be terminated only upon motion served with at least 10 days’ notice upon all parties who have appeared in the proceeding. The court

may require that a final account and report be filed and served, and may provide for the filing of written objections to such account within a specified time. At the hearing on the motion to terminate, the court shall hear all objections to the final account and shall take such evidence as is appropriate, and shall make such orders as are just concerning the termination of the receivership, including all necessary orders on the fees and costs of the receivership.”)

- Washington’s statute provides the following termination provision in Wash. Rev. Code Ann. § 7.60.290:

(1) Upon distribution or disposition of all property of the estate, or the completion of the receiver's duties with respect to estate property, the receiver shall move the court to be discharged upon notice and a hearing.

(2) The receiver's final report and accounting setting forth all receipts and disbursements of the estate shall be annexed to the petition for discharge and filed with the court.

(3) Upon approval of the final report, the court shall discharge the receiver.

(4) The receiver's discharge releases the receiver from any further duties and responsibilities as receiver under this chapter.

(5) Upon motion of any party in interest, or upon the court's own motion, the court has the power to discharge the receiver and terminate the court's administration of the property over which the receiver was appointed. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver's appointment (a) all of the receiver's fees and other costs of the receivership and (b) any other sanctions the court determines to be appropriate.

7. *Should the Act address the compensation to which the receiver is entitled, and if so, how? Does/should the receiver have a lien upon the receivership property for payment of its compensation?* The general principles governing the right of a receiver to compensation for the receiver’s services are summarized precisely in Miller & Starr, California Real Estate § 33.22, at 50-51 (3d ed.):

The receiver is entitled to seek compensation. The receiver is entitled to compensation for services rendered. If compensation is claimed in the final accounting, the receiver must state in detail what services he or she performed, and if previous allowances were made and the amount.

The amount of a receiver’s compensation is a matter within the court’s discretion. The amount of compensation awarded is within the sound discretion of the trial court and will not be reversed on appeal in the absence of an abuse of discretion.

Receiver’s fees are a cost of the estate. As a general rule, the fees and costs of the receiver are charged against the receivership estate. The estate is liable for the fees and costs even though the underlying litigation results in a dismissal of the suit or a judgment for the defendant.

Interim fees are not final. Interim fees are subject to final review and approval by the court which retains jurisdiction to award a greater or lesser amount for such services.

Liability of party seeking appointment of receiver. The party seeking appointment of a receiver may be held responsible for payment of the receiver's fees if amounts in the receivership estate are insufficient.

The list below provides a sample of the statutory provisions and rules governing the amount and payment of the receiver's compensation:

- **Georgia.** Ga. Code Ann. § 9-8-13(b) provides that the court may award the receiver “not more than 8 percent of the first \$1,000.00, 4 percent of the excess up to \$5,000.00, 3 percent of the amount above \$5,000.00 and not exceeding \$10,000.00, and 2 percent of all sums over \$10,000.00.”
- **Minnesota.** Minn. Stat. Ann. § 576.32, subd. 2 does not specify the amount of the receiver's compensation, so the amount would be subject to court approval. The statute provides:
 - (a) The receiver and any professional retained by the receiver shall be paid by the receiver from the receivership property in the same manner as other expenses of administration and without separate orders, but subject to the procedures, safeguards, and reporting that the court may order.
 - (b) Except to the extent fees and expenses have been approved by the court, or as to parties in interest who are deemed to have waived the right to object, any interim payments of fees and expenses to the receiver are subject to approval in connection with the receiver's final report pursuant to section 576.38.
- **Mississippi.** Miss. Code. Ann. § 11-5-167 (“Receivers shall be entitled to have such compensation for their services as the court shall allow, and shall have a lien upon the property in their hands for the payment thereof, and of their necessary expenses. The court shall make such order to compel the payment thereof as may be just and necessary, and may decree the payment thereof by any of the parties as a portion of the costs of the suit.”)
- **Missouri.** Mo. Rev. Stat. Ann. § 515.260 (“The court shall allow such receiver such compensation for his services and expenses as may be reasonable and just, and cause the same to be taxed as costs, and paid as other costs in the cause.”)
- **Nebraska.** Neb. Rev. Stat. § 25-1092 provides substantial flexibility to the court in establishing the receiver's compensation:

Receivers shall receive for their services such compensation as the court may award, subject to the following restrictions:

- (1) Receivers appointed for the purpose of preserving and protecting property pending litigation, or for the purpose of continuing the business of the debtor or corporation pending litigation, or when financially embarrassed, may be awarded a salary or lump sum;

- (2) Receivers appointed for the purpose of winding up the affairs of a debtor or corporation, reducing the assets to cash and distributing them, shall be awarded as compensation for such services a percentage upon the cash received and properly accounted for by them, which percentage may be increased where extraordinary services have been performed, and correspondingly reduced where the services have not been meritoriously performed.
- **New Mexico.** N.M. Rev. Stat. Ann. § 44-8-8 (“A receiver and an attorney, accountant, broker and other person duly engaged and retained by the receiver shall be entitled to receive reasonable compensation, to be paid from the receivership estate, in a sum to be fixed or approved by the district court, for services rendered to the receivership estate.”)
 - **Rhode Island.** R.I. R. Civ. Proc. 66(i) (“Allowances of fees to a receiver and the receiver's counsel, either on account or in full, shall only be made on hearing after such notice as the court shall order. Failure to comply with any order of the court may, unless explained to the satisfaction of the court, be a ground for refusing compensation to such receiver and the receiver's attorney entirely or for diminishing the amount of such allowances.”)
 - **South Carolina.** S.C. Code § 15-65-100 (“Receivers of property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them.”)
 - **Virginia.** Virginia has an very odd statute entitling a general receiver to compensation of “such amount as the court deems reasonable,” but not to exceed \$10 at the time of appointment, \$10 upon disbursement of all receivership funds, \$10 per check or draft for periodic or final disbursements, 5% of any interest income earned, and \$10 per check or draft of sums remitted to the State Treasurer. Va. Code § 8.01-589.
 - **Washington.** Wash. Rev. Code Ann. § 7.60.180(4) (“The receiver, and any professionals employed by the receiver, is permitted to file an itemized billing statement with the court indicating both the time spent, billing rates of all who perform work to be compensated, and a detailed list of expenses and serve copies on any person who has been joined as a party in the action, or any person requesting the same, advising that unless objections are filed with the court, the receiver may make the payments specified in the notice. If an objection is filed, the receiver or professional whose compensation is affected may request the court to hold a hearing on the objection on five days' notice to the persons who have filed objections. If the receiver is a custodial receiver appointed in aid of foreclosure, payment of fees and expenses may be allowed upon the stipulation of any creditor holding a security interest in the property for whose benefit the receiver is appointed.”)

The Committee should consider whether the Act should limit in any respect the permissible extent of the receiver's compensation, whether the Act should provide an explicit procedure for the receiver to obtain interim compensation during the receivership; and the manner in which the receiver may obtain final compensation at the conclusion of the receivership.

8. Should the Act address whether appointment of a receiver triggers a stay against actions by creditors? There appears to be a great deal of variation among existing state laws with respect to whether appointment of a receiver triggers a stay of creditor actions, either analogous in scope to the automatic stay in federal bankruptcy law or on a more limited basis.

While many state statutes are simply silent, others provide relatively detailed provisions governing stay of creditor actions. For example, Wash. Rev. Code Ann. § 7.60.110 provides a detailed automatic stay provision:

(1) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property shall operate as a stay, applicable to all persons, of:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the person over whose property the receiver is appointed that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the person that arose before the entry of the order of appointment;

(b) The enforcement, against the person over whose property the receiver is appointed or any estate property, of a judgment obtained before the order of appointment;

(c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;

(d) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the person that arose before the entry of the order of appointment; or

(e) Any act to collect, assess, or recover a claim against the person that arose before the entry of the order of appointment.

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

Subsection (3) provides a list of exceptions to the stay, including (among others) the continuation of the action or proceeding initiated by the party who obtained the receiver, criminal proceedings against the property owner, certain domestic proceedings, actions by governmental authorities to enforce police powers, and governmental actions to establish tax liability.

Minn. Stat. Ann. § 576.42 provides a similarly detailed stay provision, although it does provide for a broader stay for general receiverships than for custodial receiverships.

In other states, such as Rhode Island, the order appointing the receiver customarily contains an injunction against creditor actions.

The Committee should consider whether the Model Act should provide that the appointment of a receiver should operate as a stay of actions by other creditors, and if so, the appropriate scope/limits of that stay.

J. To what extent should the Act address the receiver's legal status and the extent of the receiver's liability or immunity therefrom? On the one hand, case law clearly establishes that a receiver of mortgaged real estate has a fiduciary obligation to the mortgagee, the mortgagor, and others with an interest in the real estate. On the other hand, because the receiver serves as an officer of the court, a question might arise regarding whether a receiver might enjoy immunity from suit for actions carried out in its capacity as receiver. For example, the United States Supreme Court held, in *Barton v. Barbour*, 104 U.S. 126, 129, 26 L.Ed. 672 (1881), that before suing a court-appointed receiver, the petitioning party must first seek leave of the court that appointed the receiver. The Committee should consider whether the Act should prescribe a specific rule regarding the receiver's immunity, or leave the issue to law other than the Act.

Most existing statutes do not specifically address the potential liability or immunity of the receiver. Minnesota's statute provides that a receiver may be sued in that capacity "subject to other sections of this chapter and all immunities provided at common law." Minn. Stat. Ann. § 576.39, subd. 1. The statute further provides that the receiver "shall be entitled to all defenses and immunities provided at common law for acts or omissions within the scope of the receiver's appointment," Minn. Stat. Ann. § 576.28(a), and that "[n]o person other than a successor receiver duly appointed by the court shall have a right of action against a receiver to recover receivership property or the value thereof."

Wash. Rev. Code Ann. § 7.60.170 governs the extent of the receiver's personal liability. It provides:

(1)(a) The receiver is personally liable to the person over whose property the receiver is appointed or its record or beneficial owners, or to the estate, for loss or diminution in value of or damage to estate property, only if (i) the loss or damage is caused by a failure on the part of the receiver to comply with an order of the court, or (ii) the loss or damage is caused by an act or omission for which members of a board of directors of a business corporation organized and existing under the laws of this state who vote to approve the act or omission are liable to the corporation in cases in which the liability of directors is limited to the maximum extent permitted by RCW 23B.08.320.

(b) A general receiver is personally liable to state agencies for failure to remit sales tax collected after appointment. A custodial receiver is personally liable to state agencies for failure to remit sales tax collected after appointment with regard to assets administered by the receiver.

(2) The receiver has no personal liability to a person other than the person over whose property the receiver is appointed or its record or beneficial owners for any loss or damage occasioned by the receiver's performance of the duties imposed by the appointment, or out of the receiver's authorized operation of any business of a person, except loss or damage occasioned by fraud on the part of the receiver, by acts intended by the receiver to cause loss or damage to the specific claimant, or by acts or omissions for which an officer of a business

corporation organized and existing under the laws of this state are liable to the claimant under the same circumstances.

(3) Notwithstanding subsections (1)(a) and (2) of this section, a receiver has no personal liability to any person for acts or omissions of the receiver specifically contemplated by any order of the court.

(4) A person other than a successor receiver duly appointed by the court does not have a right of action against a receiver under this section to recover property or the value thereof for or on behalf of the estate.

K. Multi-jurisdiction matters

Where the mortgagor is a single-asset real estate entity with all of its property located within one state, obtaining the appointment of a receiver for the property poses no substantial challenges (other than uncertainty about that state's receivership law, as addressed in earlier parts of this memorandum). However, using a state court to obtain control over property located in multiple states creates jurisdictional issues. A receiver appointed by a state court can only take control over assets located in that state; there is no uniform law by which a mortgagee or secured creditor can obtain a receiver in State A and thereby gain control over property located in State B. In this situation, a creditor may be able to obtain effective control over property held in another jurisdiction through an ancillary receivership.

Most existing state receivership laws do not adequately address some of the problems that can arise with respect to ancillary receiverships. For example, assume that a creditor in State A obtains an order from the court in State A appointing R as receiver for certain real estate in State A. Creditor also wants to obtain control over other real estate located in State B. Creditor would prefer to have R appointed as receiver for that property as well. There might be questions, however, as to whether R is qualified to serve as a receiver under State B's law, as well as the impact of difference in the laws of States A and B with respect to the standards for appointment of a receiver (including the effect of a consent provision in the mortgage documents) or the powers and duties of a receiver.

Minnesota provides the following provision on ancillary receiverships in Minn. Stat. Ann. § 576.41:

Subdivision 1. Ancillary receiverships in foreign jurisdictions. A receiver appointed by a court of this state may, without first seeking approval of the court, apply in any foreign jurisdiction for appointment as receiver with respect to any receivership property which is located within the foreign jurisdiction.

Subdivision 2. Ancillary receiverships in the courts of this state.

(a) A foreign receiver may obtain appointment by a court of this state as a receiver in an ancillary receivership with respect to any property located in or subject to the jurisdiction of the court if (1) the foreign receiver would be eligible to serve as receiver under section 576.26, and (2) the appointment is in furtherance of the foreign receiver's possession, control, or disposition of property subject to the foreign receivership and in accordance with orders of the foreign jurisdiction.

(b) The courts of this state may enter any order necessary to effectuate orders entered by the foreign jurisdiction's receivership proceeding. Unless the court orders otherwise, a receiver appointed in an ancillary receivership in this state shall have the powers and duties of a limited receiver as set forth in this chapter and shall otherwise comply with the provisions of this chapter applicable to limited receivers.

Washington also addresses ancillary receiverships in Wash. Rev. Code Ann. § 7.60.270:

(1) A receiver appointed in any action pending in the courts of this state, without first seeking approval of the court, may apply to any court outside of this state for appointment as receiver with respect to any property or business of the person over whose property the receiver is appointed constituting estate property which is located in any other jurisdiction, if the appointment is necessary to the receiver's possession, control, management, or disposition of property in accordance with orders of the court.

(2) A receiver appointed by a court of another state, or by a federal court in any district outside of this state, or any other person having an interest in that proceeding, may obtain appointment by a superior court of this state of that same receiver with respect to any property or business of the person over whose property the receiver is appointed constituting property of the foreign receivership that is located in this jurisdiction, if the person is eligible under RCW 7.60.035 to serve as receiver, and if the appointment is necessary to the receiver's possession, control, or disposition of the property in accordance with orders of the court in the foreign proceeding. The superior court upon the receiver's request shall enter the orders, not offensive to the laws and public policy of this state, necessary to effectuate orders entered by the court in the foreign receivership proceeding. A receiver appointed in an ancillary receivership in this state is required to comply with this chapter requiring notice to creditors or other parties in interest only as may be required by the superior court in the ancillary receivership.

L. Relationship with Other Law

1. *What changes may the Act require in other state real property law, including the law of foreclosure?* The answer to this question may vary depending upon whether an Act authorized the receiver to sell the mortgaged real estate with the same legal effect as a foreclosure proceeding or to sell the property free and clear.

2. *What coordination is appropriate between a proposed Act and existing uniform Acts such as UARA?*

3. *What coordination is necessary between a proposed Act and existing local, state, or federal regulatory laws that might apply to the receiver's conduct/operations?* For example, some state laws require the payment of all state taxes as a precondition to selling certain licenses and permits.

APPENDIX 1

Comprehensive Receivership Statutes

Minnesota Receivership Statute

Minn. Stat. Ann. §§ 559.17, 576.21 to 576.53

559.17. Mortgage not a conveyance; mortgagee cannot possess

Subdivision 1. Enforcement of rent assignment. A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure, except as permitted in subdivision 2. The enforcement of an assignment of rents of the type described in subdivision 2 shall not be deemed prohibited by this subdivision, nor because a foreclosure sale under the mortgage has extinguished all or part of the mortgage debt.

Subdivision 2. Assignment; conditions. A mortgagor may assign, as additional security for the debt secured by the mortgage, the rents and profits from the mortgaged real property, if the mortgage:

- (1) was executed, modified or amended subsequent to August 1, 1977;
- (2) secured an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and
- (3) is not a lien upon property which was:
 - (i) entirely homesteaded as agricultural property; or
 - (ii) residential real estate containing four or fewer dwelling units where at least one of the units is homesteaded. The assignment may be enforced, but only against the nonhomestead portion of the mortgaged property, as follows:
 - (a) if, by the terms of an assignment, a receiver is to be appointed upon the occurrence of some specified event, and a showing is made that the event has occurred, the court shall, without regard to waste, adequacy of the security, or solvency of the mortgagor, appoint a receiver who shall, with respect to the excess cash remaining after application as provided in section 576.25, subdivision 5, apply it as prescribed by the assignment. If the assignment so provides, the receiver shall apply the excess cash in the manner set out herein from the date of appointment through the entire redemption period from any foreclosure sale. Subject to the terms of the assignment, the receiver shall have the powers and duties as set forth in section 576.25, subdivision 5; or
 - (b) if no provision is made for the appointment of a receiver in the assignment or if by the terms of the assignment a receiver may be appointed, the assignment shall be binding upon the assignor unless or until a receiver is appointed without regard to waste, adequacy of the security or solvency of the mortgagor, but only in the event of default in the terms and conditions of the mortgage, and only in the event the assignment requires

the holder thereof to first apply the rents and profits received as provided in section 576.25, subdivision 5, in which case the same shall operate against and be binding upon the occupiers of the premises from the date of recording by the holder of the assignment in the office of the county recorder or the office of the registrar of titles for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of the notice upon the occupiers of the premises. The holder of the assignment shall apply the rents and profits received in accordance with the terms of the assignment, and, if the assignment so provides, for the entire redemption period from any foreclosure sale. A holder of an assignment who enforces it in accordance with this clause shall not be deemed to be a mortgagee in possession with attendant liability.

Nothing contained herein shall prohibit the right to reinstate the mortgage debt granted pursuant to section 580.30, nor the right to redeem granted pursuant to sections 580.23 and 581.10, and any excess cash, as that term is used herein, collected by the receiver under clause (a), or any rents and profits taken by the holder of the assignment under clause (b), shall be credited to the amount required to be paid to effect a reinstatement or redemption.

Subdivision 3. Expiration, satisfaction, release, and assignment.

(a) An assignment of rents and profits under this section, whether in the mortgage or in a separate instrument, shall expire:

(1) with respect to the rents and profits from all of the mortgaged property, when an action or proceeding to foreclose the mortgage is barred by section 541.03, or upon recording in the office of the county recorder or in the office of the registrar of titles of the county where the mortgaged property is located, of a satisfaction of the mortgage or a certificate of release complying with section 507.401 in lieu of a satisfaction of the mortgage; or

(2) with respect to the rents and profits from a portion of the mortgaged property, upon recording in the office of the county recorder or the registrar of titles of the county where that portion of the mortgaged property is located, of a release of that portion of the mortgaged property from the lien of the mortgage, or a certificate of release complying with section 507.401 in lieu of a release of that portion of the mortgaged property.

No separate reassignment of the rents and profits or satisfaction or release of the assignment is required.

(b) An assignment of a mortgage, whether or not the mortgage mentions an assignment of rents and profits, is sufficient to assign both the mortgage and the assignment of rents and profits permitted by this subdivision which secures the debt secured by the mortgage, and no separate assignment of the assignment of rents and profits shall be required.

§ 576.21. Definitions

(a) The definitions in this section apply throughout this chapter unless the context requires otherwise.

- (b) “Court” means the district court in which the receivership is pending unless the context requires otherwise.
- (c) “Entity” means a person other than a natural person.
- (d) “Executory contract” means a contract, including a lease, where the obligations of both the respondent and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.
- (e) “Foreign receiver” means a receiver appointed in any foreign jurisdiction.
- (f) “Foreign jurisdiction” means any state or federal jurisdiction other than that of this state.
- (g) “General receiver” means the receiver appointed in a general receivership.
- (h) “General receivership” means a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest, including, without limitation, a receivership resulting from the appointment of a receiver pursuant to section 302A.753, 308A.945, 308B.935, 317A.753, or 322B.836.
- (i) “Lien” means a charge against or interest in property to secure payment of a debt or the performance of an obligation, including any mortgage or security interest.
- (j) “Limited receiver” means the receiver appointed in a limited receivership.
- (k) “Limited receivership” means a receivership other than a general receivership.
- (l) “Party” means a person who is a party within the meaning of the Minnesota Rules of Civil Procedure in the action in which a receiver is appointed.
- (m) “Party in interest” includes the respondent, any equity security holder in the respondent, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the respondent.
- (n) “Person” has the meaning given it in section 645.44 and shall include limited liability companies, limited liability partnerships, and other entities recognized under the laws of this state.
- (o) “Property” means all of respondent's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of the same were or are acquired. Property includes, but is not limited to, any proceeds, products, offspring, rents, or profits of or from the property. Property does not include: (1) any power that the respondent may exercise solely for the benefit of another person, or (2) property impressed with a trust except to the extent that the respondent has a residual interest.

(p) “Receiver” means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this chapter or order of the court, dispose of receivership property.

(q) “Receivership” means the case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the respondent's property.

(r) “Receivership property” means (1) in the case of a general receivership, all or substantially all of the nonexempt property of the respondent, or (2) in the case of a limited receivership, that property of the respondent identified in the order appointing the receiver, or in any subsequent order.

(s) “Respondent” means the person over whose property the receiver is appointed.

(t) “State agent” and “state agency” means any office, department, division, bureau, board, commission, or other agency of the state of Minnesota or of any subdivision thereof, or any individual acting in an official capacity on behalf of any state agent or state agency.

(u) “Time of appointment” means the date and time specified in the first order of appointment of a receiver or, if the date and time are not specified in the order of appointment, the date and time that the court ruled on the motion for the appointment of a receiver. Time of appointment does not mean any subsequent date or time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.

(v) “Utility” means a person providing any service regulated by the Public Utilities Commission.

§ 576.22. Applicability of chapter and of common law

(a) This chapter applies to receiverships provided for in [section 576.25, subdivisions 2 to 6](#), and to receiverships:

(1) pursuant to section 193.147, in connection with a mortgage on an armory;

(2) pursuant to section 223.17, subdivision 8, paragraph (b), in connection with a defaulting grain buyer;

(3) pursuant to section 232.22, subdivision 7, paragraph (c), in connection with a defaulting public grain warehouse;

(4) pursuant to section 296A.22, in connection with nonpayment of tax;

(5) pursuant to section 302A.753, 308A.945, 308B.935, 317A.753, or 322B. 836, in an action relating to the dissolution of an entity and relating to, in like cases, property within the state of foreign entities;

(6) pursuant to section 321.0703, in connection with the rights of a creditor of a partner or transferee;

- (7) pursuant to section 322.22, in connection with the rights of creditors of limited partners;
- (8) pursuant to section 323A.0504, in connection with a partner's transferable interest;
- (9) pursuant to section 453.55, in connection with bonds and notes;
- (10) pursuant to section 453A.05, in connection with bonds and notes;
- (11) pursuant to section 513.47, in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;
- (12) pursuant to section 514.06, in connection with the severance of a building and resale;
- (13) pursuant to section 515.23, in connection with an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;
- (14) pursuant to section 518A.71, in connection with the failure to pay, or to provide security for, maintenance or support payments;
- (15) pursuant to section 559.17, in connection with assignments of rents; however, any receiver appointed under section 559.17 shall be a limited receiver, and the court shall apply the provisions of this chapter to the extent not inconsistent with section 559.17;
- (16) pursuant to section 571.84, in connection with a garnishee in possession of property subject to a garnishment proceeding;
- (17) pursuant to section 575.05, in connection with property applied to judgment;
- (18) pursuant to section 575.06, in connection with adverse claimants;
- (19) pursuant to sections 582.05 to 582.10, in connection with mortgage foreclosures; however, any receiver appointed under sections 582.05 to 582.10 shall be a limited receiver, and the court shall apply the provisions of this chapter to the extent not inconsistent with sections 582.05 to 582.10;
- (20) pursuant to section 609.904, in connection with criminal penalties; or
- (21) pursuant to section 609.907, in connection with preservation of property subject to forfeiture.

(b) This chapter does not apply to any receivership in which the receiver is a state agency or in which the receiver is appointed, controlled, or regulated by a state agency unless otherwise provided by law.

(c) In receiverships not specifically referenced in paragraph (a) or (b), the court, in its discretion, may apply provisions of this chapter to the extent not inconsistent with the statutes establishing the receiverships.

(d) Unless explicitly displaced by this chapter, the provisions of other statutory law and the principles of common law remain in full force and effect and supplement the provisions of this chapter.

§ 576.23. Powers of the court. The court has the exclusive authority to direct the receiver and the authority over all receivership property wherever located including, without limitation, authority to determine all controversies relating to the collection, preservation, improvement, disposition, and distribution of receivership property, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

§ 576.24. Types of receiverships. A receivership may be either a limited receivership or a general receivership. Any receivership which is based upon the enforcement of an assignment of rents or leases, or the foreclosure of a mortgage lien, judgment lien, mechanic's lien, or other lien pursuant to which the respondent or any holder of a lien would have a statutory right of redemption, shall be a limited receivership. If the order appointing the receiver does not specify whether the receivership is a limited receivership or a general receivership, the receivership shall be a limited receivership unless and until the court by later order designates the receivership as a general receivership, notwithstanding that pursuant to section 576.25, subdivision 8, a receiver may have control over all the property of the respondent. At any time, the court may order a general receivership to be converted to a limited receivership and a limited receivership to be converted to a general receivership.

§ 576.25. Appointment of receivers; receivership not a trust

Subdivision 1. No necessity of separate action. A receiver may be appointed under this chapter whether or not the motion for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment.

Subdivision 2. Before judgment. Except where judgment for failure to answer may be had without application to the court, a limited receiver may be appointed before judgment to protect any party to an action who demonstrates an apparent right to property that is the subject of the action and is in the possession of an adverse party, and that the property or its rents and profits are in danger of loss or material impairment.

Subdivision 3. In a judgment or after judgment. A limited or general receiver may be appointed in a judgment or after judgment to carry the judgment into effect, to preserve property pending an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment.

Subdivision 4. Entities. In addition to those situations specifically provided for in statute, a limited or general receiver may be appointed when a corporation or other entity is dissolved, insolvent, in imminent danger of insolvency, or has forfeited its corporate rights and in like cases of the property within the state of foreign corporations and other entities.

Subdivision 5. Appointment of receiver of mortgaged property.

(a) A limited receiver shall be appointed at any time after the commencement of mortgage foreclosure proceedings under chapter 580 or 581 and before the end of the period for redemption, if the mortgage being foreclosed:

- (1) secures an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and
- (2) is not a lien upon property that was entirely homesteaded, residential real estate containing four or fewer dwelling units where at least one unit is homesteaded; or agricultural property.

The foreclosing mortgagee or the purchaser at foreclosure sale may at any time bring an action in the district court of the county in which the mortgaged property or any part thereof is located for the appointment of a receiver; provided, however, if the foreclosure is by action under chapter 581, a separate action need not be filed.

(b) The court shall appoint a receiver upon a showing that the mortgagor has breached a covenant contained in the mortgage relating to any of the following:

- (1) application of tenant security deposits as required by section 504B.178;
- (2) payment when due of prior or current real estate taxes or special assessments with respect to the mortgaged property or the periodic escrow for the payment of the taxes or special assessments;
- (3) payment when due of premiums for insurance of the type required by the mortgage or the periodic escrow for the payment of the premiums; or
- (4) keeping of the covenants required of a landlord or licensor pursuant to section 504B.161, subdivision 1.

(c) The receiver shall be or shall retain an experienced property manager.

(d) The receiver shall collect the rents, profits, and all other income of any kind. The receiver, after providing for payment of its reasonable fees and expenses, shall, to the extent possible and in the order determined by the receiver to preserve the value of the mortgaged property:

- (1) manage the mortgaged property so as to prevent waste;
- (2) execute contracts and leases within the period of the receivership, or beyond the period of the receivership if approved by the court;
- (3) pay the expenses listed in paragraph (b), clauses (1) to (3);
- (4) pay all expenses for normal maintenance of the mortgaged property; and
- (5) perform the terms of any assignment of rents that complies with section 559.17, subdivision 2.

(e) The purchaser at a foreclosure sale shall have the right, at any time and without limitation as provided in section 582.03, to advance money to the receiver to pay any or all of the expenses that the receiver should otherwise pay if cash were available from the mortgaged property. Sums so advanced, with interest, shall be a part of the sum required to be paid to redeem from the sale. The sums shall be proved by the affidavit of the purchaser, an agent, or attorney, stating the expenses and describing the mortgaged property. The affidavit shall be furnished to the sheriff in the manner of expenses claimed under section 582.03.

(f) Any sums collected that remain in the possession of the receiver at the termination of the receivership shall, in the event the termination of the receivership is due to the reinstatement of the mortgage debt or redemption of the mortgaged property by the mortgagor, be paid to the mortgagor; and in the event termination of the receivership occurs at the end of the period of redemption without redemption by the mortgagor or any other party entitled to redeem, interest accrued upon the sale price pursuant to section 580.23 or 581.10 shall be paid to the purchaser at the foreclosure sale. Any net sum remaining shall be paid to the mortgagor, except if the receiver was enforcing an assignment of rents that complies with section 559.17, subdivision 2, in which case any net sum remaining shall be paid pursuant to the terms of the assignment.

(g) This subdivision applies to all mortgages executed on or after August 1, 1977, and to amendments or modifications thereto, and to amendments or modifications made on or after August 1, 1977, to mortgages executed before August 1, 1977, if the amendment or modification is duly recorded and is for the principle purpose of curing a default.

Subdivision 6. Other cases. A receiver may be appointed in other cases as are provided by law, or in accord with existing practice, except as otherwise prescribed.

Subdivision 7. Motion for appointment of receiver. The court may appoint a receiver upon a motion with notice to the respondent, to all other parties in the action, and to parties in interest and other persons as the court may require. Notice shall also be given to any judgment creditor who is seeking the appointment of a receiver in any other action. A motion to appoint a general receiver shall be treated as a dispositive motion. The court may appoint a receiver ex parte or on shortened notice on a temporary basis if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burdens of proof shall be as would be applicable to a motion made on notice that is not expedited.

Subdivision 8. Description of receivership property. The order appointing the receiver or subsequent order shall describe the receivership property with particularity appropriate to the circumstances. If the order does not so describe the receivership property, until further order of the court, the receiver shall have control over all of the respondent's nonexempt property.

Subdivision 9. Receivership not a trust. The order appointing the receiver does not create a trust.

§ 576.26. Eligibility of receiver

Subdivision 1. Who may serve as receiver. Unless otherwise prohibited by law or prior order, any person, whether or not a resident of this state, may serve as a receiver, provided that the

court, in its order appointing the receiver, makes written conclusions based in the record that the person proposed as receiver:

- (1) is qualified to serve as receiver and as an officer of the court; and
- (2) is independent as to the parties and the underlying dispute.

Subdivision 2. Considerations regarding qualifications.

(a) In determining whether a proposed receiver is qualified to serve as receiver and as an officer of the court, the court shall consider any relevant information, including, but not limited to, whether:

- (1) the proposed receiver has knowledge and experience sufficient to perform the duties of receiver;
- (2) the proposed receiver has the financial ability to post the bond required by section 578.06;
- (3) the proposed receiver or any insider of the proposed receiver has been previously disqualified from serving as receiver and the reasons for disqualification;
- (4) the proposed receiver or any insider of the proposed receiver has been convicted of a felony or other crime involving moral turpitude; and
- (5) the proposed receiver or any insider of the proposed receiver has been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

(b) For the purposes of this subdivision, “insider” includes:

- (1) if the proposed receiver is a corporation, an officer or director of the corporation, or a person in control of the proposed receiver; and
- (2) if the proposed receiver is a partnership, a general or limited partner of the partnership, or a person in control of the proposed receiver.

Subdivision 3. Considerations regarding independence.

(a) In determining whether a proposed receiver is independent as to the parties and the underlying dispute, the court shall consider any relevant information, including, but not limited to:

- (1) the nature and extent of any relationship that the proposed receiver has to the parties and the property proposed as receivership property including, without limitation, whether the proposed receiver is a party to the action, a family member of a party to the action, or an officer, director, member, employee, or owner of or controls a party to the action;
- (2) whether the proposed receiver has any interest materially adverse to the interests of any of the parties to the action;

(3) whether the proposed receiver has any material financial or pecuniary interest, other than receiver compensation allowed by court order, in the outcome of the underlying dispute, including any proposed contingent or success fee compensation arrangement; and

(4) whether the proposed receiver is a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any of the parties to the action of the receivership property.

(b) In evaluating all information, the court may exercise its discretion and need not consider any single item of information to be determinative of independence. Without limiting the generality of the preceding sentence, the proposed receiver shall not be disqualified solely because the proposed receiver was appointed receiver in other unrelated matters involving any of the parties to the matter in which the appointment is sought, or the proposed receiver has been engaged by any of the parties to the action in matters unrelated to the underlying action.

Subdivision 4. Information provided to court. The proposed receiver, the parties, and prospective parties in interest may provide any information relevant to the qualifications, independence, and the selection of the receiver.

§ 576.27. Bond. After appointment, a receiver shall give a bond in the sum, nature, and with the conditions that the court shall order in its discretion consistent with section 574.11. Unless otherwise ordered by the court, the receiver's bond shall be conditioned on the receiver's faithful discharge of its duties in accordance with the orders of the court and the laws of this state. The receiver shall execute a bond with a surety authorized to write bonds in the state.

§ 576.28. Immunity; discovery from receiver

(a) The receiver shall be entitled to all defenses and immunities provided at common law for acts or omissions within the scope of the receiver's appointment.

(b) No person other than a successor receiver duly appointed by the court shall have a right of action against a receiver to recover receivership property or the value thereof.

(c) A party or party in interest may conduct discovery of the receiver concerning any matter relating to the receiver's administration of the receivership property after obtaining an order authorizing the discovery.

§ 576.29. Powers and duties of receivers; generally

Subdivision 1. Powers.

(a) A receiver, whether general or limited, shall have the following powers in addition to those specifically conferred by this chapter or otherwise by statute, rule, or order of the court:

(1) the power to collect, control, manage, conserve, and protect receivership property;

(2) the power to incur and pay expenses incidental to the receiver's exercise of the powers or otherwise in the performance of the receiver's duties;

(3) the power to assert rights, claims, causes of action, or defenses that relate to receivership property; and

(4) the power to seek and obtain instruction from the court with respect to any matter relating to the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

(b) In addition to the powers provided in paragraph (a), a general receiver shall have the power:

(1) to (i) assert any rights, claims, causes of action, or defenses of the respondent to the extent any rights, claims, causes of action, or defenses are receivership property; (ii) maintain in the receiver's name or in the name of the respondent any action to enforce any right, claim, cause of action, or defense; and (iii) intervene in actions in which the respondent is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the court;

(2) to pursue any claim or remedy that may be asserted by a creditor of the respondent under sections 513.41 to 513.51;

(3) to compel any person, including the respondent, and any party, by subpoena pursuant to Rule 45 of the Minnesota Rules of Civil Procedure, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things with respect to receivership property or any other matter that may affect the administration of the receivership;

(4) to operate any business constituting receivership property in the ordinary course of the business, including the use, sale, or lease of property of the business or otherwise constituting receivership property, and the incurring and payment of expenses of the business or other receivership property;

(5) if authorized by an order of the court following notice and a hearing, to use, improve, sell, or lease receivership property other than in the ordinary course of business; and

(6) if appointed pursuant to section 302A.753, 308A.945, 308B.935, 317A. 753, or 322B.836, to exercise all of the powers and authority provided by the section or order of the court.

Subdivision 2. Duties. A receiver, whether general or limited, shall have the duties specifically conferred by this chapter or otherwise by statute, rule, or order of the court.

Subdivision 3. Modification of powers and duties. Except as otherwise provided in this chapter, the court may modify the powers and duties of a receiver provided by this section.

§ 576.30. Receiver as lien creditor; real estate recording; subsequent sales of real estate

Subdivision 1. Receiver as lien creditor. As of the time of appointment, the receiver shall have the powers and priority as if it were a creditor that obtained a judicial lien at the time of

appointment pursuant to sections 548.09 and 550.10 on all of the receivership property, subject to satisfying the recording requirements as to real property described in subdivision 2.

Subdivision 2. Real estate recording. If any interest in real estate is included in the receivership property, a notice of lis pendens shall be recorded as soon as practicable with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located. The priority of the receiver as lien creditor against real property shall be from the time of recording of the notice of lis pendens, except as to persons with actual or implied knowledge of the appointment under section 507.34.

Subdivision 3. Subsequent sales of real estate. The notice of lis pendens, a court order authorizing the receiver to sell real property certified by the court administrator, and a deed executed by the receiver recorded with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located, and upon execution of the deed by the receiver shall be prima facie evidence of the authority of the receiver to sell and convey the real property described in the deed. The court may also require a motion for an order for sale of the real property or a motion for an order confirming sale of the real property.

§ 576.31. Duties of respondent. The respondent shall:

(1) assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's duties, and comply with all orders of the court;

(2) immediately upon the receiver's appointment, deliver to the receiver all of the receivership property in the respondent's possession, custody, or control, including, but not limited to, all books and records, electronic data, passwords, access codes, statements of accounts, deeds, titles or other evidence of ownership, financial statements, and all other papers and documents related to the receivership property;

(3) supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file; and

(4) remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect.

§ 576.32. Employment and compensation of professionals

Subdivision 1. Employment.

(a) To represent or assist the receiver in carrying out the receiver's duties, the receiver may employ attorneys, accountants, appraisers, auctioneers, and other professionals that do not hold or represent an interest adverse to the receivership.

(b) This section does not require prior court approval for the retention of professionals. However, any professional to be retained shall provide the receiver with a disclosure of any potential conflicts of interest, and the professional or the receiver shall file with the court a notice of the

retention and of the proposed compensation. Any party in interest may bring a motion for disapproval of any retention within 21 days after the filing of the notice of retention.

(c) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with the receiver, respondent, a creditor, or other party in interest if the court determines that the employment is appropriate.

Subdivision 2. Compensation.

(a) The receiver and any professional retained by the receiver shall be paid by the receiver from the receivership property in the same manner as other expenses of administration and without separate orders, but subject to the procedures, safeguards, and reporting that the court may order.

(b) Except to the extent fees and expenses have been approved by the court, or as to parties in interest who are deemed to have waived the right to object, any interim payments of fees and expenses to the receiver are subject to approval in connection with the receiver's final report pursuant to section 576.38.

§ 576.33. Schedules of property and claims

(a) The court may order the respondent or a general receiver to file under oath to the best of its actual knowledge:

(1) a schedule of all receivership property and exempt property of the respondent, describing, as of the time of appointment: (i) the location of the property and, if real property, a legal description thereof; (ii) a description of all liens to which the property is subject; and (iii) an estimated value of the property; and

(2) a schedule of all creditors and taxing authorities and regulatory authorities which supervise the respondent, their mailing addresses, the amount and nature of their claims, whether the claims are secured by liens of any kind, and whether the claims are disputed.

(b) The court may order inventories and appraisals if appropriate to the receivership.

§ 576.34. Notice. In a general receivership, unless the court orders otherwise, the receiver shall give notice of the receivership to all creditors and other parties in interest actually known to the receiver by mail or other means of transmission within 21 days after the time of appointment. The notice of the receivership shall include the time of appointment and the names and addresses of the respondent, the receiver, and the receiver's attorney, if any.

§ 576.35. Notices, motions, and orders

Subdivision 1. Notice of appearance. Any party in interest may make an appearance in a receivership by filing a written notice of appearance, including the name, mailing address, fax number, e-mail address, if any, and telephone number of the party in interest and its attorney, if any, and by serving a copy on the receiver and the receiver's attorney, if any. It is not necessary for a party in interest to be joined as a party to be heard in the receivership. A proof of claim does not constitute a written notice of appearance.

Subdivision 2. Master service list. From time to time the receiver shall file an updated master service list consisting of the names, mailing addresses, and, where available, fax numbers and e-mail addresses of the respondent, the receiver, all persons joined as parties in the receivership, all persons known by the receiver to have asserted any ownership or lien in receivership property, all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any.

Subdivision 3. Motions. Except as otherwise provided in this chapter, an order shall be sought by a motion brought in compliance with the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts.

Subdivision 4. Persons served. Except as otherwise provided in this chapter, a motion shall be served as provided in the Minnesota Rules of Civil Procedure, unless the court orders otherwise, on all persons on the master service list, all persons who have asserted an ownership interest or lien in receivership property that is the subject of the motion, all persons who are identified in the motion as directly affected by the relief requested, and other persons as the court may direct.

Subdivision 5. Service on state agency. Any request for relief against a state agency shall be served as provided in the Minnesota Rules of Civil Procedure, unless the court orders otherwise, on the specific state agency and on the Office of the Attorney General.

Subdivision 6. Order without hearing. Where a provision in this chapter, an order issued in the receivership, or a court rule requires an objection or other response to a motion or application within a specific time, and no objection or other response is interposed, the court may grant the relief requested without a hearing.

Subdivision 7. Order upon application. Where a provision of this chapter permits, as to administrative matters, or where it otherwise appears that no party in interest would be materially prejudiced, the court may issue an order ex parte or based on an application without a motion, notice, or hearing.

Subdivision 8. Persons bound by orders of the court. Except as to persons entitled to be served pursuant to subdivision 4 and who were not served, an order of the court binds parties in interest and all persons who file notices of appearance, submit proofs of claim, receive written notice of the receivership, receive notice of any motion in the receivership, or who have actual knowledge of the receivership whether they are joined as parties or received notice of the specific motion or order.

§ 576.36. Records; interim reports

Subdivision 1. Preparation and retention of records. The receiver shall prepare and retain appropriate business records, including records of all cash receipts and disbursements and of all receipts and distributions or other dispositions of receivership property. After due consideration of issues of confidentiality, the records may be provided by the receiver to parties in interest or shall be provided as ordered by the court.

Subdivision 2. Interim reports.

(a) The court may order the receiver to prepare and file interim reports addressing:

- (1) the activities of the receiver since the last report;
- (2) cash receipts and disbursements, including payments made to professionals retained by the receiver;
- (3) receipts and dispositions of receivership property; and
- (4) other matters.

(b) The order may provide for the delivery of the receiver's interim reports to persons on the master service list and to other persons and may provide a procedure for objection to the interim reports, and may also provide that the failure to object constitutes a waiver of objection to matters addressed in the interim reports.

§ 576.37. Removal of receivers

Subdivision 1. Removal of receiver. The court may remove the receiver if: (1) the receiver fails to execute and file the bond required by section 576.27; (2) the receiver resigns, refuses, or fails to serve for any reason; or (3) for other good cause.

Subdivision 2. Successor receiver. Upon removal of the receiver, if the court determines that further administration of the receivership is required, the court shall appoint a successor receiver. Upon executing and filing a bond under section 576.27, the successor receiver shall immediately succeed the receiver so removed and shall assume the duties of receiver.

Subdivision 3. Report and discharge of removed receiver. Within 14 days after removal, the receiver so removed shall file with the court and serve a report pursuant to section 576.38, subdivision 3, for matters up to the date of the removal. Upon approval of the report, the court may enter an order pursuant to section 576.38 discharging the removed receiver.

§ 576.38. Termination of receiverships; final report

Subdivision 1. Termination of receivership. The court may discharge a receiver and terminate the receivership. If the court determines that the appointment of the receiver was procured in bad faith, the court may assess against the person who procured the receiver's appointment:

- (1) all of the receiver's fees and expenses and other costs of the receivership; and
- (2) any other sanctions the court deems appropriate.

Subdivision 2. Request for discharge. Upon distribution or disposition of all receivership property, or the completion of the receiver's duties, the receiver shall file a final report and shall request that the court approve the final report and discharge the receiver.

Subdivision 3. Contents of final report. The final report, which may incorporate by reference interim reports, shall include, in addition to any matters required by the court in the case:

- (1) a description of the activities of the receiver in the conduct of the receivership;
- (2) a schedule of all receivership property at the commencement of the receivership and any receivership property added thereafter;
- (3) a list of expenditures, including all payments to professionals retained by the receiver;
- (4) a list of any unpaid expenses incurred during the receivership;
- (5) a list of all dispositions of receivership property;
- (6) a list of all distributions made or proposed to be made; and
- (7) if not done separately, a motion or application for approval of the payment of fees and expenses of the receiver.

Subdivision 4. Notice of final report. The receiver shall give notice of the filing of the final report and request for discharge to all persons who have filed notices of appearance. If there is no objection within 21 days, the court may enter an order approving the final report and discharging the receiver without the necessity of a hearing.

Subdivision 5. Effect of discharge. A discharge removes all authority of the receiver, excuses the receiver from further performance of any duties, and discharges any lis pendens recorded by the receiver.

§ 576.39. Actions by or against receiver or relating to receivership property

Subdivision 1. Actions by or against receiver. The receiver may sue in the receiver's capacity and, subject to other sections of this chapter and all immunities provided at common law, may be sued in that capacity.

Subdivision 2. Venue. Unless applicable law requires otherwise or the court orders otherwise, an action by or against the receiver or relating to the receivership or receivership property shall be commenced in the court and assigned to the judge before whom the receivership is pending.

Subdivision 3. Joinder. Subject to section 576.42, a limited or general receiver may be joined or substituted as a party in any action or other proceeding that relates to receivership property that was pending at the time of appointment. Subject to other sections of this chapter, a general receiver may be joined or substituted as a party in any action or other proceeding that was pending at the time of appointment in which the respondent is a party. Pending actions may be transferred to the court upon the receiver's motion for change of venue made in the court in which the action is pending.

Subdivision 4. Effect of judgments. A judgment entered subsequent to the time of appointment against a receiver or the respondent shall not constitute a lien on receivership property, nor shall any execution issue thereon. Upon submission of a certified copy of the judgment in accordance with section 576.49, the amount of the judgment shall be treated as an allowed claim in a general receivership. A judgment against a limited receiver shall have the same effect as a judgment

against the respondent, except that the judgment shall be enforceable against receivership property only to the extent ordered by the court.

§ 576.40. Turnover of property

Subdivision 1. Demand by receiver. Except as expressly provided in this section, and unless otherwise ordered by the court, upon demand by a receiver, any person shall turn over any receivership property that is within the possession or control of that person. Unless ordered by the court, a person in possession of receivership property pursuant to a valid lien perfected prior to the time of appointment is not required to turn over receivership property.

Subdivision 2. Motion by receiver. A receiver may seek to compel turnover of receivership property by motion in the receivership. If there exists a bona fide dispute with respect to the existence or nature of the receiver's or the respondent's interest in the property, turnover shall be sought by means of an action under section 576.39. In the absence of a bona fide dispute with respect to the receiver's or the respondent's right to possession of receivership property, the failure to relinquish possession and control to the receiver may be punishable as contempt of the court.

§ 576.41. Ancillary receiverships

Subdivision 1. Ancillary receiverships in foreign jurisdictions. A receiver appointed by a court of this state may, without first seeking approval of the court, apply in any foreign jurisdiction for appointment as receiver with respect to any receivership property which is located within the foreign jurisdiction.

Subdivision 2. Ancillary receiverships in the courts of this state.

(a) A foreign receiver may obtain appointment by a court of this state as a receiver in an ancillary receivership with respect to any property located in or subject to the jurisdiction of the court if (1) the foreign receiver would be eligible to serve as receiver under section 576.26, and (2) the appointment is in furtherance of the foreign receiver's possession, control, or disposition of property subject to the foreign receivership and in accordance with orders of the foreign jurisdiction.

(b) The courts of this state may enter any order necessary to effectuate orders entered by the foreign jurisdiction's receivership proceeding. Unless the court orders otherwise, a receiver appointed in an ancillary receivership in this state shall have the powers and duties of a limited receiver as set forth in this chapter and shall otherwise comply with the provisions of this chapter applicable to limited receivers.

§ 576.42. Stays

Subdivision 1. Control of property. All receivership property is under the control and supervision of the court appointing the receiver.

Subdivision 2. Stay by court order. In addition to any stay provided in this section, the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.

Subdivision 3. Stay in all receiverships. Except as otherwise ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of:

(1) any act to obtain possession of receivership property, or to interfere with or exercise control over receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property; and

(2) any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

Subdivision 4. Limited additional stay in general receiverships.

(a) Except as otherwise ordered by the court, in addition to the stay provided in subdivision 3, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of:

(1) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, against the respondent or the receiver that was or could have been commenced before the time of appointment, or to recover a claim against the respondent that arose before the time of appointment;

(2) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

(b) As to the acts specified in this subdivision, the stay shall expire 30 days after the time of appointment unless, before the expiration of the 30-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 30-day period, the court orders the stay extended.

Subdivision 5. Modification of stay. The court may modify any stay provided in this section upon the motion of any party in interest affected by the stay.

Subdivision 6. Inapplicability of stay. The entry of an order appointing a receiver does not operate as a stay of:

(1) the commencement or continuation of a criminal proceeding against the respondent;

(2) the commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;

(3) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the respondent;

(4) the establishment by a governmental unit of any tax liability and any appeal thereof;

(5) the commencement or continuation of an action or proceeding to establish paternity; to establish or modify an order for alimony, maintenance, or support; or to collect alimony, maintenance, or support under any order of a court;

(6) the exercise of a right of setoff;

(7) any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was necessary to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action;

(8) the commencement of a bankruptcy case under federal bankruptcy laws; or

(9) any other exception as provided in United States Code, title 11, section 326(b), as to the automatic stay in federal bankruptcy cases to the extent not inconsistent with any provision in this section.

§ 576.43. Utility service. A utility providing service to receivership property that has received written notice from the receiver of the appointment of the receiver may not alter, refuse, or discontinue service to the receivership property without first giving the receiver written notice of any receivership default in compliance with the utility's approved tariffs. After written notice to the utility and a hearing satisfactory to the court, the court may prohibit the alteration, refusal, or discontinuance of utility service if the receiver furnishes adequate assurance of payment for service to be provided after the time of appointment.

§ 576.44. Receivership financing

(a) Without necessity of a court order, the receiver may obtain unsecured credit and incur unsecured debt on behalf of the receivership, and the amounts shall be allowable as expenses of the receivership under section 576.51, subdivision 1, clause (2).

(b) Without necessity of a court order, the receiver may obtain secured financing on behalf of the receivership from any secured party under a financing facility existing at the time of the appointment.

(c) The court may authorize the receiver to obtain credit or incur indebtedness, and the court may authorize the receiver to mortgage, pledge, hypothecate, or otherwise encumber receivership property as security for repayment of any indebtedness.

§ 576.45. Executory contracts

Subdivision 1. Performance by receiver. Unless a court orders otherwise, a receiver succeeds to all of the rights and duties of the respondent under any executory contract. The court may condition the continued performance by the receiver on terms that are appropriate under the circumstances. Performance of an executory contract shall create a claim against the receivership to the extent of the value of the performance received by the receivership after the time of appointment. The claim shall not constitute a personal obligation of the receiver.

Subdivision 2. Assignment and delegation by receiver. For good cause, the court may authorize a receiver to assign and delegate an executory contract to a third party under the same circumstances and under the same conditions as the respondent was permitted to do so pursuant to the terms of the executory contract and applicable law immediately before the time of appointment.

Subdivision 3. Termination by receiver. For good cause, the court may authorize the receiver to terminate an executory contract. The receiver's right to possess or use property pursuant to the executory contract shall terminate at the termination of the executory contract. Except as to the claim against the receivership under subdivision 1, the termination shall create a claim equal to the damages, if any, for a breach of contract as if the breach of contract had occurred immediately before the time of appointment. Any claim arising under this section for termination of an executory contract shall be presented or filed in the same manner as other claims in the receivership no later than the later of: (1) the time set for filing of claims in the receivership; or (2) 28 days after the notice by the receiver of the termination of the executory contract.

§ 576.46. Sales free and clear of lien in general receiverships

Subdivision 1. Sales free and clear of liens.

(a) The court may order that a general receiver's sale of receivership property is free and clear of all liens, except any lien for unpaid real estate taxes or assessments and liens arising under federal law, and may be free of the rights of redemption of the respondent if the rights of redemption are receivership property and the rights of redemption of the holders of any liens, regardless of whether the sale will generate proceeds sufficient to fully satisfy all liens on the property, unless either:

(1) the property is (i) real property classified as agricultural land under section 273.13, subdivision 23, or the property is a homestead under section 510.01; and (ii) each of the owners of the property has not consented to the sale following the time of appointment; or

(2) any owner of the property or holder of a lien on the property serves and files a timely objection, and the court determines that the amount likely to be realized from the sale by the objecting person is less than the objecting person would realize within a reasonable time in the absence of this sale.

(b) The receiver shall have the burden of proof to establish that the amount likely to be realized by the objecting person from the sale is equal to or more than the objecting person would realize within a reasonable time in the absence of the sale.

(c) Upon any sale free and clear of liens authorized by this section, all liens encumbering the property conveyed shall transfer and attach to the proceeds of the sale, net of reasonable expenses approved by the court incurred in the disposition of the property, in the same order, priority, and validity as the liens had with respect to the property immediately before the sale. The court may authorize the receiver to satisfy, in whole or in part, any ownership interest or lien out of the proceeds of the sale if the ownership interest or lien of any party in interest would not thereby be impaired.

Subdivision 2. Co-owned property. If any receivership property includes an interest as a co-owner of property, the receiver shall have the rights and powers afforded by applicable state or federal law of the respondent, including but not limited to any rights of partition, but may not sell the property free and clear of the co-owner's interest in the property.

Subdivision 3. Right to credit bid. A creditor with a claim secured by a valid and perfected lien against the property to be sold may bid on the property at a sale and may offset against the purchase price part or all of the amount secured by its lien, provided that the creditor tenders cash sufficient to satisfy in full the reasonable expenses, approved by the court, incurred in the disposition of the property and all liens payable out of the proceeds of sale having priority over the lien of that creditor.

Subdivision 4. Effect of appeal. The reversal or modification on appeal of an authorization to sell property under this section does not affect the validity of a sale to a person that purchased the property in good faith, whether or not the person knew of the pendency of the appeal, unless the authorization and sale is stayed pending the appeal.

§ 576.47. Abandonment of property. The court may authorize the receiver to abandon any receivership property that is burdensome or is not of material value to the receivership. Property that is abandoned is no longer receivership property.

§ 576.48. Liens against after-acquired property. Except as otherwise provided for by statute, property that becomes receivership property after the time of appointment is subject to a lien to the same extent as it would have been in the absence of the receivership.

§ 576.49. Claims process

Subdivision 1. Recommendation of receiver. In a general receivership, and in a limited receivership if the circumstances require, the receiver shall submit to the court a recommendation concerning a claims process appropriate to the particular receivership.

Subdivision 2. Order establishing process. In a general receivership and, if the court orders, in a limited receivership, the court shall establish the claims process to be followed in the receivership addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place where the proofs of claim must be submitted, the deadline or deadlines for submitting the proofs of claim, and other matters bearing on the claims process.

Subdivision 3. Alternative procedures. The court may authorize proofs of claim to be filed with the receiver rather than the court. The court may authorize the receiver to treat claims as allowed claims based on the amounts established in the books and records of the respondent or

the schedule of claims filed pursuant to section 576.33, without necessity of formal proofs of claim.

§ 576.50. Objection to and allowance of claims

Subdivision 1. Objections and allowance. The receiver or any party in interest may file a motion objecting to a claim and stating the grounds for the objection. The court may order that a copy of the objection be served on the persons on the master service list at least 30 days prior to the hearing. Claims allowed by court order, and claims properly submitted and not disallowed by the court shall be allowed claims and shall be entitled to share in distributions of receivership property in accordance with the priorities provided by this chapter or otherwise by law.

Subdivision 2. Examination of claims. If the claims process does not require proofs of claim to be filed with the court, at any time after expiration of the claim-filing period and upon 14 days' written notice to the receiver, any party in interest shall have the right to examine:

- (1) all claims filed with the receiver; and
- (2) all books and records in the receiver's possession that provided the receiver the basis for concluding that creditors identified therein are entitled to participate in any distributions of receivership property without having to file claims.

Subdivision 3. Estimation of claims. For the purpose of allowance of claims, the court may estimate:

- (1) any contingent or unliquidated claim, the fixing or liquidation of which would unduly delay the administration of the receivership; or
- (2) any right to payment arising from a right to an equitable remedy.

§ 576.51. Priority of claims

Subdivision 1. Priorities. Allowed claims shall receive distribution under this chapter in the following order of priority and, except as set forth in clause (1), on a pro rata basis:

- (1) claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law, subject first to reimbursing the receiver for the reasonable and necessary expenses of preserving, protecting, or disposing of the collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professionals;
- (2) actual, necessary costs and expenses incurred during the receivership, other than those expenses allowable under clause (1), including allowed fees and reimbursement of reasonable expenses of the receiver and professionals employed by the receiver under section 576.32;
- (3) claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within the 90 days before

the time of appointment or the cessation of the respondent's business, whichever occurs first, but only to the extent of the dollar amount in effect in United States Code, title 11, section 507(4);

(4) allowed unsecured claims, to the extent of the dollar amount in effect in United States Code, title 11, section 507(7), for each individual, arising from the deposit with the respondent, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided;

(5) claims for arrears in amounts owing pursuant to a support order as defined in section 518A.26, subdivision 3;

(6) unsecured claims of governmental units for taxes that accrued before the time of appointment of the receiver;

(7) all other unsecured claims due as of the time of appointment, including the balance due the holders of secured claims to the extent not satisfied under clause (1); and

(8) interest pursuant to section 576.52.

Subdivision 2. Payments to respondent. If all of the amounts payable under subdivision 1 have been paid in full, any remaining receivership property shall be returned to the respondent.

§ 576.52. Interest on unsecured claims. To the extent that funds are available to pay holders of allowed unsecured claims in full or the amounts due as of the time of appointment, each holder shall also be entitled to receive interest, calculated from the time of appointment, at the rate set forth in the agreement evidencing the claim, or if no rate is provided, at the judgment rate that would be payable as of the time of appointment; provided however, that no holder shall be entitled to interest on that portion, if any, of its unsecured claim that is itself interest calculated from the time of appointment. If there are not sufficient funds in the receivership to pay in full the interest owed to all the holders, then the interest shall be paid pro rata.

§ 576.53. Distributions

Subdivision 1. Proposed distributions. Before any interim or final distribution is made, the receiver shall file a distribution schedule listing the proposed distributions. The distribution schedule may be filed at any time during the case or may be included in the final report.

Subdivision 2. Notice. The receiver shall give notice of the filing of the distribution schedule to all persons on the master mailing list or that have filed proofs of claim. If there is no objection within 21 days after the notice, the court may enter an order authorizing the receiver to make the distributions described in the distribution schedule without the necessity of a hearing.

Subdivision 3. Other distributions. In the order appointing the receiver or in subsequent orders, the court may authorize distribution of receivership property to persons with ownership interests or liens.

Washington Receivership Statute

Wash. Rev. Code Ann. §§ 7.60.005 to 7.60.300

§ 7.60.005. Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

- (1) “Court” means the superior court of this state in which the receivership is pending.
- (2) “Entity” means a person other than a natural person.
- (3) “Estate” means the entirety of the property with respect to which a receiver's appointment applies, but does not include trust fund taxes or property of an individual person exempt from execution under the laws of this state. Estate property includes any nonexempt interest in property that is partially exempt, including fee title to property subject to a homestead exemption under chapter 6.13 RCW.
- (4) “Executory contract” means a contract where the obligation of both the person over whose property the receiver is appointed and the other party to the contract are so far unperformed that the failure of either party to the contract to complete performance would constitute a material breach of the contract, thereby excusing the other party's performance of the contract.
- (5) “Insolvent” or “insolvency” means a financial condition of a person such that the sum of the person's debts and other obligations is greater than all of that person's property, at a fair valuation, exclusive of (a) property transferred, concealed, or removed with intent to hinder, delay, or defraud any creditors of the person, and (b) any property exempt from execution under any statutes of this state.
- (6) “Lien” means a charge against or interest in property to secure payment of a debt or the performance of an obligation.
- (7) “Notice and a hearing” or any similar phrase means notice and opportunity for a hearing.
- (8) “Person” means an individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, governmental entity, or other entity, of any kind or nature.
- (9) “Property” includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired. “Property” includes any proceeds, products, offspring, rents, or profits of or from property in the estate. “Property” does not include any power that a person may exercise solely for the benefit of another person or trust fund taxes.
- (10) “Receiver” means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person.

(11) “Receivership” means the case in which the receiver is appointed. “General receivership” means a receivership in which a general receiver is appointed. “Custodial receivership” means a receivership in which a custodial receiver is appointed.

(12) “Security interest” means a lien created by an agreement.

(13) “State agent” and “state agency” means any office, department, division, bureau, board, commission, or other agency of the state of Washington or of any subdivision thereof, or any individual acting in an official capacity on behalf of any state agent or state agency.

(14) “Utility” means a person providing any service regulated by the utilities and transportation commission.

§ 7.60.015. Types of receivers. A receiver must be either a general receiver or a custodial receiver. A receiver must be a general receiver if the receiver is appointed to take possession and control of all or substantially all of a person's property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs. A receiver must be a custodial receiver if the receiver is appointed to take charge of limited or specific property of a person or is not given authority to liquidate property. The court shall specify in the order appointing a receiver whether the receiver is appointed as a general receiver or as a custodial receiver. When the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee's sale under RCW 61.24.040 or a notice of forfeiture under RCW 61.30.040, the court shall appoint the receiver as a custodial receiver. The court by order may convert either a general receivership or a custodial receivership into the other.

§ 7.60.025. Appointment of receiver

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

- (m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;
- (n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;
- (o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;
- (p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;
- (q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;
- (r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;
- (s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;
- (t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;
- (u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;
- (v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;
- (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;
- (x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the

payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

§ 7.60.035. Eligibility to serve as receiver. Except as provided in this chapter or otherwise by statute, any person, whether or not a resident of this state, may serve as a receiver, with the exception that a person may not be appointed as a receiver, and shall be replaced as receiver if already appointed, if it should appear to the court that the person:

- (1) Has been convicted of a felony or other crime involving moral turpitude or is controlled by a person who has been convicted of a felony or other crime involving moral turpitude;
- (2) Is a party to the action, or is a parent, grandparent, child, grandchild, sibling, partner, director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or holder of any equity interest in, or controls or is controlled by, the person whose property is to be held by the receiver, or who is the agent or attorney of any disqualified person;
- (3) Has an interest materially adverse to the interest of persons to be affected by the receivership generally; or
- (4) Is the sheriff of any county.

§ 7.60.045. Receiver's bond. Except as otherwise provided for by statute or court rule, before entering upon duties of receiver, a receiver shall execute a bond with one or more sureties approved by the court, in the amount the court specifies, conditioned that the receiver will faithfully discharge the duties of receiver in accordance with orders of the court and state law. Unless otherwise ordered by the court, the receiver's bond runs in favor of all persons having an interest in the receivership proceeding or property held by the receiver and in favor of state agencies. The receiver's bond must provide substantially as follows:

[Case Caption]

RECEIVER'S BOND

TO WHOM IT MAY CONCERN:

KNOW ALL BY THESE PRESENTS, that, as Principal, and, as Surety, are held and firmly bound in the amount of Dollars (\$) for the faithful performance by Principal of the Principal's duties as receiver with respect to property of in accordance with order(s) of such court previously or hereafter entered in the above-captioned proceeding and state law. If the Principal faithfully discharges the duties of receiver in accordance with such orders, this obligation shall be void, but otherwise it will remain in full force and effect.

Dated this ... day of,

[Signature of Receiver]

[Signature of Surety]

The court, in lieu of a bond, may approve the posting of alternative security, such as a letter of credit or a deposit of funds with the clerk of the court, to be held by the clerk to secure the receiver's faithful performance of the receiver's duties in accordance with orders of the court and state law until the court authorizes the release or return of the deposited sums. No part of the property over which the receiver is appointed may be used in making the deposit; however, any interest that may accrue on a deposit ordered by the court shall be remitted to the receiver upon the receiver's discharge. A claim against the bond shall be made within one year from the date the receiver is discharged. Claims by state agencies against the bond shall have priority.

§ 7.60.055. Powers of the court

(1) Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

(2) For good cause shown, the court has the power to shorten or expand the time frames specified in this chapter.

§ 7.60.060. Powers and duties of receiver generally

(1) A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order:

(a) The power to incur or pay expenses incidental to the receiver's preservation and use of the property with respect to which the appointment applies, and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if and to the extent that payment is determined by the receiver to be prudent in order to preserve the value of property in the receiver's possession and the funds used for this purpose are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment and whose interest is not otherwise adequately protected;

(b) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of any person, to do all things which the owner of the business or property might do in the ordinary course of the operation of the business as a going concern or use of the property including, but not limited to, the purchase and sale of goods or services in the ordinary course of such business, and the incurring and payment of expenses of the business or property in the ordinary course;

(c) The power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or relate to any property, to maintain in the receiver's name or in the name of such a person any action to enforce any right, claim, or chose in action, and to intervene in actions in which the person over whose

property the receiver is appointed is a party for the purpose of exercising the powers under this subsection (1)(c);

(d) The power to intervene in any action in which a claim is asserted against the person over whose property the receiver is appointed relating thereto, for the purpose of prosecuting or defending the claim and requesting the transfer of venue of the action to the court. However, the court shall not transfer actions in which both a state agency is a party and as to which a statute expressly vests jurisdiction or venue elsewhere. This power is exercisable with court approval in the case of a liquidating receiver, and with or without court approval in the case of a general receiver;

(e) The power to assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant;

(f) The power to pursue in the name of the receiver any claim under chapter 19.40 RCW assertable by any creditor of the person over whose property the receiver is appointed, if pursuit of the claim is determined by the receiver to be appropriate;

(g) The power to seek and obtain advice or instruction from the court with respect to any course of action with respect to which the receiver is uncertain in the exercise of the receiver's powers or the discharge of the receiver's duties;

(h) The power to obtain appraisals with respect to property in the hands of the receiver;

(i) The power by subpoena to compel any person to submit to an examination under oath, in the manner of a deposition in a civil case, with respect to estate property or any other matter that may affect the administration of the receivership; and

(j) Other powers as may be conferred upon the receiver by the court or otherwise by statute or rule.

(2) A receiver has the following duties in addition to those specifically conferred by this chapter or otherwise by statute or court rule:

(a) The duty to notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to 26 U.S.C. § 6036 and RCW 51.14.073, 51.16.160, and 82.32.240, or any successor statutes;

(b) The duty to comply with state law;

(c) If the receiver is appointed with respect to any real property, the duty to file with the auditor of the county in which the real property is located, or the registrar of lands in accordance with RCW 65.12.600 in the case of registered lands, a certified copy of the order of appointment, together with a legal description of the real property if one is not included in that order; and

(d) Other duties as the receiver may be directed to perform by the court or as may be provided for by statute or rule.

(3) The various powers and duties of a receiver provided for by this chapter may be expanded, modified, or limited by order of the court for good cause shown.

§ 7.60.070. Turnover of property. Upon demand by a receiver appointed under this chapter, any person shall turn over any property over which the receiver has been appointed that is within the possession or control of that person unless otherwise ordered by the court for good cause shown. A receiver by motion may seek to compel turnover of estate property unless there exists a bona fide dispute with respect to the existence or nature of the receiver's interest in the property, in which case turnover shall be sought by means of an action under RCW 7.60.160. In the absence of a bona fide dispute with respect to the receiver's right to possession of estate property, the failure to relinquish possession and control to the receiver shall be punishable as a contempt of the court.

§ 7.60.080. Duties of person over whose property the receiver is appointed. The person over whose property the receiver is appointed shall:

(1) Assist and cooperate fully with the receiver in the administration of the estate and the discharge of the receiver's duties, and comply with all orders of the court;

(2) Supply to the receiver information necessary to enable the receiver to complete any schedules that the receiver may be required to file under RCW 7.60.090, and otherwise assist the receiver in the completion of the schedules;

(3) Upon the receiver's appointment, deliver into the receiver's possession all of the property of the estate in the person's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and

(4) Following the receiver's appointment, submit to examination by the receiver, or by any other person upon order of the court, under oath, concerning the acts, conduct, property, liabilities, and financial condition of that person or any matter relating to the receiver's administration of the estate.

When the person over whose property the receiver is appointed is an entity, each of the officers, directors, managers, members, partners, or other individuals exercising or having the power to exercise control over the affairs of the entity are subject to the requirements of this section.

§ 7.60.090. Schedules of property and liabilities--Inventory of property--Appraisals

(1) In the event of a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the assignment shall have annexed as schedule A a true list of all of the person's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of the assignment.

(2) In all other cases, within thirty-five days after the date of appointment of a general receiver, the receiver shall file as schedule A a true list of all of the known creditors and applicable regulatory and taxing agencies of the person over whose assets the receiver is appointed, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate identifiable by the receiver, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.

(3) The schedules must be in substantially the following forms:

SCHEDULE A—CREDITOR LIST

1. List all creditors having security interests or liens, showing:

Name	Address	Amount	Collateral	Whether or not disputed
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2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

3. List all consumer deposits owed, showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

4. List all taxes owed, showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

5. List all unsecured claims, showing:

Name	Address	Amount	Whether or not disputed
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6. List all owners or shareholders, showing:

Name	Address	Percentage of Ownership
------	---------	-------------------------

7. List all applicable regulatory agencies, showing:

Name	Address
------	---------

SCHEDULE B—LIST OF PROPERTY

List each category of property and for each give approximate value obtainable for the asset on the date of assignment/appointment of the receiver, and address where asset is located.

I. Nonexempt Property	Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
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1. Legal Description and street address of real property, including leasehold interests:
2. Fixtures:
3. Cash and bank accounts:
4. Inventory:
5. Accounts receivable:
6. Equipment:
7. Prepaid expenses, including deposits, insurance, rents, and utilities:
8. Other, including loans to third parties, claims, and choses in action:

II. Exempt Property	Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
---------------------	--------------------------	---

I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this ... day of, at, state of

[SIGNATURES]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver's possession if ordered by the court.

(6) The receiver shall file a complete inventory of the property in the receiver's possession if ordered by the court.

§ 7.60.100. Receiver's reports. A general receiver shall file with the court a monthly report of the receiver's operations and financial affairs unless otherwise ordered by the court. Except as otherwise ordered by the court, each report of a general receiver shall be due by the last day of the subsequent month and shall include the following:

- (1) A balance sheet;
- (2) A statement of income and expenses;
- (3) A statement of cash receipts and disbursements;
- (4) A statement of accrued accounts receivable of the receiver. The statement shall disclose amounts considered to be uncollectable;
- (5) A statement of accounts payable of the receiver, including professional fees. The statement shall list the name of each creditor and the amounts owing and remaining unpaid over thirty days; and
- (6) A tax disclosure statement, which shall list postfiling taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make payments or deposits.

A custodial receiver shall file with the court all such reports the court may require.

§ 7.60.110. Automatic stay of certain proceedings

(1) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property shall operate as a stay, applicable to all persons, of:

- (a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the person over whose property the receiver is appointed that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the person that arose before the entry of the order of appointment;
- (b) The enforcement, against the person over whose property the receiver is appointed or any estate property, of a judgment obtained before the order of appointment;
- (c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;
- (d) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the person that arose before the entry of the order of appointment; or
- (e) Any act to collect, assess, or recover a claim against the person that arose before the entry of the order of appointment.

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to

the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

(3) The entry of an order appointing a receiver does not operate as a stay of:

(a) The continuation of a judicial action or nonjudicial proceeding of the type described in RCW 7.60.025(1) (b), (ee), or (ff), if the action or proceeding was initiated by the party seeking the receiver's appointment;

(b) The commencement or continuation of a criminal proceeding against the person over whose property the receiver is appointed;

(c) The commencement or continuation of an action or proceeding to establish paternity, or to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court;

(d) Any act to perfect, or to maintain or continue the perfection of, an interest in estate property if the interest perfected would be effective against a creditor of the person over whose property the receiver is appointed holding at the time of the entry of the order of appointment either a perfected nonpurchase money security interest under chapter 62A.9A RCW against the property involved, or a lien by attachment, levy, or the like, whether or not such a creditor exists. If perfection of an interest would require seizure of the property involved or the commencement of an action, the perfection shall instead be accomplished by filing, and by serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time fixed by law for seizure or commencement;

(e) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;

(f) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the person over whose property the receiver is appointed;

(g) The exercise of a right of setoff, including but not limited to (i) any right of a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and (ii) any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement; or

(h) The establishment by a governmental unit of any tax liability and any appeal thereof.

§ 7.60.130. Executory contracts and unexpired leases

(1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7.60.210 within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a case is entitled to receive from the receiver any deed or any other instrument of conveyance which the person over whose property the receiver is appointed is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien against the interest in that real property of the person over whose property the receiver is appointed for the recovery of any portion of the purchase price that the purchaser has paid.

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption or as otherwise ordered by the court for good cause shown.

(8) Nothing in this chapter affects the enforceability of antiassignment prohibitions provided under contract or applicable law.

§ 7.60.140. Receivership financing

(1) If a receiver is authorized to operate the business of a person or manage a person's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under RCW 7.60.230(1)(a) as an administrative expense of the receiver without order of the court.

(2) The court, after notice and a hearing, may authorize a receiver to obtain credit or incur indebtedness other than in the ordinary course of business. The court may allow the receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as security for repayment of any indebtedness that the receiver may incur.

§ 7.60.150. Abandonment of property. The receiver, or any party in interest, upon order of the court following notice and a hearing, and upon the conditions or terms the court considers just and proper, may abandon any estate property that is burdensome to the receiver or is of inconsequential value or benefit. However, a receiver may not abandon property that is a hazard or potential hazard to the public in contravention of a state statute or rule that is reasonably designed to protect the public health or safety from identified hazards, including but not limited to chapters 70.105 and 70.105D RCW. Property that is abandoned no longer constitutes estate property.

§ 7.60.160. Actions by and against the receiver or affecting property held by receiver

(1) The receiver has the right to sue and be sued in the receiver's capacity as such, without leave of court, in all cases necessary or proper for the conduct of the receivership. However, action seeking to dispossess the receiver of any estate property or otherwise to interfere with the receiver's management or control of any estate property may not be maintained or continued unless permitted by order of the court obtained upon notice and a hearing.

(2) Litigation by or against a receiver is adjunct to the receivership case. The clerk of the court shall assign a cause number that reflects the relationship of any litigation to the receivership case. All pleadings in adjunct litigation shall include the cause number of the receivership case as well as the adjunct litigation number assigned by the clerk of the court. All adjunct litigation shall be referred to the judge, if any, assigned to the receivership case.

(3) The receiver may be joined or substituted as a party in any suit or proceeding that was pending at the time of the receiver's appointment and in which the person over whose property the receiver is appointed is a party, upon application by the receiver to the court or agency before which the action is pending.

(4) Venue for adjunct litigation by or against the receiver shall lie in the court in which the receivership is pending, if the courts of this state have jurisdiction over the cause. Actions in other courts in this state shall be transferred to the court upon the receiver's filing of a motion for change of venue, provided that the receiver files the motion within thirty days following service of original process upon the receiver. However, actions in other courts or forums in which a state agency is a party shall not be transferred on request of the receiver absent consent of the affected state agency or grounds provided under other applicable law.

(5) Action by or against a receiver does not abate by reason of death or resignation of the receiver, but continues against the successor receiver or against the entity in receivership, if a successor receiver is not appointed.

(6) Whenever the assets of any domestic or foreign corporation, that has been doing business in this state, has been placed in the hands of any general receiver and the receiver is in possession of its assets, service of all process upon the corporation may be made upon the receiver.

(7) A judgment against a general receiver is not a lien on the property or funds of the receivership, nor shall any execution issue thereon, but upon entry of the judgment in the court in which a general receivership is pending, or upon filing in a general receivership of a certified copy of the judgment from another jurisdiction, the judgment shall be treated as an allowed claim in the receivership. A judgment against a custodial receiver shall be treated and has the same effect as a judgment against the person over whose property the receiver is appointed, except that the judgment is not enforceable against estate property unless otherwise ordered by the court upon notice and a hearing.

§ 7.60.170. Personal liability of receiver

(1)(a) The receiver is personally liable to the person over whose property the receiver is appointed or its record or beneficial owners, or to the estate, for loss or diminution in value of or damage to estate property, only if (i) the loss or damage is caused by a failure on the part of the receiver to comply with an order of the court, or (ii) the loss or damage is caused by an act or omission for which members of a board of directors of a business corporation organized and existing under the laws of this state who vote to approve the act or omission are liable to the corporation in cases in which the liability of directors is limited to the maximum extent permitted by RCW 23B.08.320.

(b) A general receiver is personally liable to state agencies for failure to remit sales tax collected after appointment. A custodial receiver is personally liable to state agencies for failure to remit sales tax collected after appointment with regard to assets administered by the receiver.

(2) The receiver has no personal liability to a person other than the person over whose property the receiver is appointed or its record or beneficial owners for any loss or damage occasioned by the receiver's performance of the duties imposed by the appointment, or out of the receiver's authorized operation of any business of a person, except loss or damage occasioned by fraud on the part of the receiver, by acts intended by the receiver to cause loss or damage to the specific claimant, or by acts or omissions for which an officer of a business corporation organized and existing under the laws of this state are liable to the claimant under the same circumstances.

(3) Notwithstanding subsections (1)(a) and (2) of this section, a receiver has no personal liability to any person for acts or omissions of the receiver specifically contemplated by any order of the court.

(4) A person other than a successor receiver duly appointed by the court does not have a right of action against a receiver under this section to recover property or the value thereof for or on behalf of the estate.

§ 7.60.180. Employment and compensation of professionals

(1) The receiver, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the estate to represent or assist the receiver in carrying out the receiver's duties.

(2) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with a creditor or other party in interest,

if the relationship is disclosed in the application for the person's employment and if the court determines that there is no actual conflict of interest or inappropriate appearance of a conflict.

(3) This section does not preclude the court from authorizing the receiver to act as attorney or accountant if the authorization is in the best interests of the estate.

(4) The receiver, and any professionals employed by the receiver, is permitted to file an itemized billing statement with the court indicating both the time spent, billing rates of all who perform work to be compensated, and a detailed list of expenses and serve copies on any person who has been joined as a party in the action, or any person requesting the same, advising that unless objections are filed with the court, the receiver may make the payments specified in the notice. If an objection is filed, the receiver or professional whose compensation is affected may request the court to hold a hearing on the objection on five days' notice to the persons who have filed objections. If the receiver is a custodial receiver appointed in aid of foreclosure, payment of fees and expenses may be allowed upon the stipulation of any creditor holding a security interest in the property for whose benefit the receiver is appointed.

§ 7.60.190. Participation of creditors and parties in interest in receivership proceeding—effect of court orders on nonparties

(1) Creditors and parties in interest to whom written notice of the pendency of the receivership is given in accordance with RCW 7.60.210, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the acts of the receiver with regard to management and disposition of estate property whether or not they are formally joined as parties.

(2) Any person having a claim against or interest in any estate property or in the receivership proceedings may appear in the receivership, either in person or by an attorney. Appearance must be made by filing a written notice of appearance, including the name and mailing address of the party in interest, and the name and address of the person's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all persons joined as parties in the receivership and of all persons serving and filing notices of appearance in the receivership in accordance with this section. A creditor or other party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action.

(3) Any request for relief against a state agency shall be mailed to or otherwise served on the agency and on the office of the attorney general.

(4) Orders of the court with respect to the treatment of claims and disposition of estate property, including but not limited to orders providing for sales of property free and clear of liens, are effective as to any person having a claim against or interest in the receivership estate and who has actual knowledge of the receivership, whether or not the person receives written notice from the receiver and whether or not the person appears or participates in the receivership.

(5) The receiver shall give not less than ten days' written notice by mail of any examination by the receiver of the person with respect to whose property the receiver has been appointed and to persons who serve and file an appearance in the proceeding.

(6) Persons on the master mailing list are entitled to not less than thirty days' written notice of the hearing of any motion or other proceeding involving any proposed:

- (a) Allowance or disallowance of any claim or claims;
- (b) Abandonment, disposition, or distribution of estate property, other than an emergency disposition of property subject to eroding value or a disposition of property in the ordinary course of business;
- (c) Compromise or settlement of a controversy that might affect the distribution to creditors from the estate;
- (d) Compensation of the receiver or any professional employed by the receiver; or
- (e) Application for termination of the receivership or discharge of the receiver. Notice of the application shall also be sent to state taxing and applicable regulatory agencies.

Any opposition to any motion to authorize any of the actions under (a) through (e) of this subsection must be filed and served upon the receiver and the receiver's attorney, if any, at least three days before the date of the proposed action. Persons on the master mailing list shall be served with all pleadings or in opposition to any motion. The court may require notice to be given to persons on the master mailing list of additional matters the court deems appropriate. The receiver shall make a copy of the current master mailing list available to any person on that list upon the person's request.

(7) All persons duly notified by the receiver of any hearing to approve or authorize an action or a proposed action by the receiver is bound by any order of the court with respect to the action, whether or not the persons have appeared or objected to the action or proposed action or have been joined formally as parties to the particular action.

(8) Whenever notice is not specifically required to be given under this chapter, the court may consider motions and grant or deny relief without notice or hearing, if it appears that no person joined as a party or who has appeared in the receivership would be prejudiced or harmed by the relief requested.

§ 7.60.200. Notice to creditors and other parties in interest

(1) A general receiver shall give notice of the receivership by publication in a newspaper of general circulation published in the county or counties in which estate property is known to be located once a week for three consecutive weeks, the first notice to be published within thirty days after the date of appointment of the receiver; and by mailing notice to all known creditors and other known parties in interest within thirty days after the date of appointment of the receiver. The notice of the receivership shall include the date of appointment of the receiver; the name of the court and the case number; the last day on which claims may be filed with the court and mailed to or served upon the receiver; and the name and address of the debtor, the receiver, and the receiver's attorney, if any. For purposes of this section, all intangible property of a person is deemed to be located in the county in which an individual owner thereof resides, or in which any entity owning the property maintains its principal administrative offices.

(2) The notice of the receivership shall be in substantially the following form:

IN THE SUPERIOR COURT, IN AND FOR

_____ COUNTY, WASHINGTON

[Case Name]

)
)
)
)
)
)

Case No.

NOTICE OF RECEIVERSHIP

TO CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that a receiver was appointed for _____, whose last known address is _____, on _____, ____.

YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you must file proof of claim with the court within 30 days after the date of this notice. If you are a state agency, you must file proof of claim with the receiver within 180 days after the date of this notice. A copy of your claim must also be either mailed to or served upon the receiver.

RECEIVER

Attorney for receiver (if any):_____

Address:_____

§ 7.60.210. Submission of claims in general receiverships

(1) All claims, whether contingent, liquidated, unliquidated, or disputed, other than claims of creditors with security interests in or other liens against property of the estate, arising prior to the receiver's appointment, must be served in accordance with this chapter, and any claim not so filed is barred from participating in any distribution to creditors in any general receivership.

(2) Claims must be served by delivering the claim to the general receiver within thirty days from the date notice is given by mail under this section, unless the court reduces or extends the period for cause shown, except that a claim arising from the rejection of an executory contract or an unexpired lease of the person over whose property the receiver is appointed may be filed within thirty days after the rejection. Claims need not be filed. Claims must be served by state agencies on the general receiver within one hundred eighty days from the date notice is given by mail under this section.

(3) Claims must be in written form entitled “Proof of Claim,” setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor's authorized agent. When a claim, or an interest in estate property of securing the claim, is based on a writing, the original or a copy of the writing must be included as a part of the proof of claim, together with evidence of perfection of any security interest or other lien asserted by the claimant.

(4) A claim, executed and served in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.

§ 7.60.220. Objection to and allowance of claims

(1) At any time prior to the entry of an order approving the general receiver's final report, the general receiver or any party in interest may file with the court an objection to a claim, which objection must be in writing and must set forth the grounds for the objection. A copy of the objection, together with notice of hearing, must be mailed to the creditor at least thirty days prior to the hearing. Claims properly served upon the general receiver and not disallowed by the court are entitled to share in distributions from the estate in accordance with the priorities provided for by this chapter or otherwise by law.

(2) Upon the request of a creditor, the general receiver, or any party in interest objecting to the creditor's claim, or upon order of the court, an objection is subject to mediation prior to adjudication of the objection, under the rules or orders adopted or issued with respect to mediations. However, state claims are not subject to mediation absent agreement of the state.

(3) Upon motion of the general receiver or other party in interest, the following claims may be estimated for purpose of allowance under this section under the rules or orders applicable to the estimation of claims under this subsection:

(a) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(b) Any right to payment arising from a right to an equitable remedy for breach of performance.

Claims subject to this subsection shall be allowed in the estimated amount thereof.

§ 7.60.230. Priorities

(1) Allowed claims in a general receivership shall receive distribution under this chapter in the order of priority under (a) through (h) of this subsection and, with the exception of (a) and (c) of this subsection, on a pro rata basis.

(a) Creditors with liens on property of the estate, which liens are duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral. However, the receiver may recover from property securing an allowed secured claim the reasonable, necessary expenses of preserving, protecting, or disposing of the property to the extent of any benefit to the creditors. If and to the extent that the proceeds are less than the amount of a

creditor's allowed claim or a creditor's lien is avoided on any basis, the creditor is an unsecured claim under (h) of this subsection. Secured claims shall be paid from the proceeds in accordance with their respective priorities under otherwise applicable law.

(b) Actual, necessary costs and expenses incurred during the administration of the estate, other than those expenses allowable under (a) of this subsection, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver under RCW 7.60.180. Notwithstanding (a) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining or consenting to the appointment of the receiver.

(c) Creditors with liens on property of the estate, which liens have not been duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral if and to the extent that unsecured claims are made subject to those liens under applicable law.

(d) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within one hundred eighty days of the date of appointment of the receiver or the cessation of the estate's business, whichever occurs first, but only to the extent of ten thousand nine hundred fifty dollars.

(e) Allowed unsecured claims, to the extent of two thousand four hundred twenty-five dollars for each individual, arising from the deposit with the person over whose property the receiver is appointed before the date of appointment of the receiver of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided.

(f) Claims for a support debt as defined in RCW 74.20A.020(10), but not to the extent that the debt (i) is assigned to another entity, voluntarily, by operation of law, or otherwise; or (ii) includes a liability designated as a support obligation unless that liability is actually in the nature of a support obligation.

(g) Unsecured claims of governmental units for taxes which accrued prior to the date of appointment of the receiver.

(h) Other unsecured claims.

(2) If all of the classes under subsection (1) of this section have been paid in full, any residue shall be paid to the person over whose property the receiver is appointed.

§ 7.60.240. Secured claims against after-acquired property. Except as otherwise provided for by statute, property acquired by the estate or by the person over whose property the receiver is appointed after the date of appointment of the receiver is subject to an allowed secured claim to the same extent as would be the case in the absence of a receivership.

§ 7.60.250. Interest on claims. To the extent that funds are available in the estate for distribution to creditors in a general receivership, the holder of an allowed noncontingent, liquidated claim is entitled to receive interest at the legal rate or other applicable rate from the date of appointment of the receiver or the date on which the claim became a noncontingent, liquidated claim. If there

are sufficient funds in the estate to fully pay all interest owing to all members of the class, then interest shall be paid proportionately to each member of the class.

§ 7.60.260. Receiver's disposition of property--Sales free and clear

(1) The receiver, with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business. Except in the case of a leasehold estate with a remaining term of less than two years or a vendor's interest in a real estate contract, estate property consisting of real property may not be sold by a custodial receiver other than in the ordinary course of business.

(2) The court may order that a general receiver's sale of estate property either (a) under subsection (1) of this section, or (b) consisting of real property which the debtor intended to sell in its ordinary course of business be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

(i) The property is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead under RCW 6.13.010(1), and the owner of the property has not consented to the sale following the appointment of the receiver; or

(ii) The owner of the property or a creditor with an interest in the property serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all security interests and other liens encumbering the property conveyed transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property, in the same order, priority, and validity as the liens had with respect to the property immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

(3) At a public sale of property under subsection (1) of this section, a creditor with an allowed claim secured by a lien against the property to be sold may bid at the sale of the property. A secured creditor who purchases the property from a receiver may offset against the purchase price its allowed secured claim against the property, provided that the secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over the secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

(4) If estate property includes an interest as a co-owner of property, the receiver shall have the rights and powers of a co-owner afforded by applicable state or federal law, including but not limited to any rights of partition.

(5) The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to an entity that purchased or leased the property in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal.

§ 7.60.270. Ancillary receiverships

(1) A receiver appointed in any action pending in the courts of this state, without first seeking approval of the court, may apply to any court outside of this state for appointment as receiver with respect to any property or business of the person over whose property the receiver is appointed constituting estate property which is located in any other jurisdiction, if the appointment is necessary to the receiver's possession, control, management, or disposition of property in accordance with orders of the court.

(2) A receiver appointed by a court of another state, or by a federal court in any district outside of this state, or any other person having an interest in that proceeding, may obtain appointment by a superior court of this state of that same receiver with respect to any property or business of the person over whose property the receiver is appointed constituting property of the foreign receivership that is located in this jurisdiction, if the person is eligible under RCW 7.60.035 to serve as receiver, and if the appointment is necessary to the receiver's possession, control, or disposition of the property in accordance with orders of the court in the foreign proceeding. The superior court upon the receiver's request shall enter the orders, not offensive to the laws and public policy of this state, necessary to effectuate orders entered by the court in the foreign receivership proceeding. A receiver appointed in an ancillary receivership in this state is required to comply with this chapter requiring notice to creditors or other parties in interest only as may be required by the superior court in the ancillary receivership.

§ 7.60.280. Resignation or removal of receiver

(1) The court shall remove or replace the receiver on application of the person over whose property the receiver is appointed, the receiver, or any creditor, or on the court's own motion, if the receiver fails to execute and file the bond required by RCW 7.60.045, or if the receiver resigns or refuses or fails to serve for any reason, or for other good cause.

(2) Upon removal, resignation, or death of the receiver, the court shall appoint a successor receiver if the court determines that further administration of the estate is required. Upon executing and filing a bond under RCW 7.60.045, the successor receiver shall immediately take possession of the estate and assume the duties of receiver.

(3) Whenever the court is satisfied that the receiver so removed or replaced has fully accounted for and turned over to the successor receiver appointed by the court all of the property of the estate and has filed a report of all receipts and disbursements during the person's tenure as receiver, the court shall enter an order discharging that person from all further duties and responsibilities as receiver after notice and a hearing.

§ 7.60.290. Termination of receivership

(1) Upon distribution or disposition of all property of the estate, or the completion of the receiver's duties with respect to estate property, the receiver shall move the court to be discharged upon notice and a hearing.

(2) The receiver's final report and accounting setting forth all receipts and disbursements of the estate shall be annexed to the petition for discharge and filed with the court.

(3) Upon approval of the final report, the court shall discharge the receiver.

(4) The receiver's discharge releases the receiver from any further duties and responsibilities as receiver under this chapter.

(5) Upon motion of any party in interest, or upon the court's own motion, the court has the power to discharge the receiver and terminate the court's administration of the property over which the receiver was appointed. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver's appointment (a) all of the receiver's fees and other costs of the receivership and (b) any other sanctions the court determines to be appropriate.

§ 7.60.300. Applicability. This chapter applies to receivers and receiverships otherwise provided for by the laws of this state except as otherwise expressly provided for by statute or as necessary to give effect to the laws of this state. This chapter does not apply to any proceeding authorized by or commenced under Title 48 RCW.

Appendix 2: Receivership Statutes of “Moderate” Scope

South Dakota Receivership Statute S. Dak. Cod. Laws §§ 21-21-1 to 21-21-10

§ 21-21-1. Pending actions in which receivership authorized to prevent loss of property. A receiver may be appointed by the court in which an action is pending, or by the judge thereof, on the application of the plaintiff or of any party whose right to or interest in the property, funds, or proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured, in any of the following actions:

- (1) By a vendor to vacate a fraudulent purchase of property;
- (2) By a creditor to subject any property or fund to his claim;
- (3) Between partners or others jointly owning or interested in any property or fund.

§ 21-21-2. Receivership in foreclosure actions to prevent loss to mortgaged property. A receiver may be appointed by the court in which the action is pending, or by the judge thereof, in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed, and that the property is probably insufficient to discharge the mortgage debt.

§ 21-21-3. Receivership where corporation dissolved, insolvent or unable to function. A receiver may be appointed by the court in which an action is pending, or by the judge thereof, in the cases where a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights; or is unable to exercise its corporate functions because of continued dissension between or neglect by its stockholders, directors and officers.

§ 21-21-4. Grounds for receivership after judgment. A receiver may be appointed after judgment by the court in which the judgment was entered, or by the judge thereof:

- (1) To carry the judgment into effect;
- (2) To dispose of the property according to the judgment or to preserve it during the pendency of an appeal;
- (3) In proceedings in aid of execution, when an execution has been returned unsatisfied; or
- (4) When the judgment debtor refuses to apply his property in satisfaction of the judgment.

§ 21-21-5. Receivership under usages of equity. A receiver may be appointed by the court in which an action is pending, or by the judge thereof, in all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 21-21-6. Undertaking required of applicant on ex parte appointment of receiver—Amount and terms—Additional undertaking. If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

§ 21-21-7. Party not to be receiver except by consent. No party or person interested in an action can be appointed receiver therein, without the written consent of the parties, filed with the clerk.

§ 21-21-8. Oath and undertaking of receiver. Before entering upon his duties the receiver must be sworn to perform them faithfully, and, with one or more sureties, approved by the court or judge, execute an undertaking to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

§ 21-21-9. Powers of receiver in collection and management of property. The receiver has, under the control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

§ 21-21-10. Investment of receivership funds—Consent of parties. Funds in the hands of a receiver may be invested upon interest, by order of the court, but no such order can be made except upon the consent of all the parties to the action.

Oklahoma Receivership Statute

Okla. Stat. Ann. tit. 12, §§ 1551 to 1559

§ 1551. Appointment of receiver. A receiver may be appointed by a Judge of the Supreme Court or a district court judge:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property or in connection with a mortgagee foreclosing his mortgage by power of sale under the Oklahoma Power of Sale Mortgage Foreclosure Act:

- a. where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or

b. that a condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt, or

c. that a condition of the mortgage has not been performed and the mortgage instrument provides for the appointment of a receiver.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In the cases provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

§ 1552. Persons ineligible. No party, or attorney, or person interested in an action, shall be appointed receiver therein except by consent of all parties thereto.

§ 1553. Oath and bond. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge; execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

§ 1554. Powers of receiver. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the courts may authorize.

§ 1555. Investment of funds. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made, except upon the consent of all the parties to the action.

§ 1556. Disposition of property litigated. When it is admitted, by the pleading or oral examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.

§ 1557. Punishment for disobedience of court. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order

requiring the sheriff to take the money, or thing, and deposit or deliver it, in conformity with the direction of the court.

§ 1559. Vacation of appointment by Supreme Court. In all cases in the Supreme Court in which a receiver has been appointed, or refused, by any Justice of the Supreme Court, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Supreme Court, if the same be in session, or before a quorum of the Justices of said Court in vacation, at such time and place as the said Court or the Justices thereof may determine, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court or a Justice thereof, conditioned for the due prosecution of such cause, and the payment of all costs and damages that may accrue to the state, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

New Mexico Receivership Act **N. Mex. Stat. Ann. §§ 44-8-1 to 44-8-10**

§ 44-8-1. Short title. This act may be cited as the “Receivership Act”.

§ 44-8-2. Purpose. The purpose of the Receivership Act is to provide a framework for the creation and administration of receiverships.

§ 44-8-3. Definitions. As used in the Receivership Act:

- A. “applicant” means an interested person who seeks the appointment of a receiver;
- B. “business entity” means a sole proprietorship, a profit or nonprofit corporation, a general or limited partnership, business trust, joint venture or other enterprise composed of one or more persons or entities;
- C. “interested person” means any secured or unsecured creditor, a shareholder of a corporation, a general or limited partner of a partnership or a person jointly owning or interested in a receivership estate; and
- D. “receivership estate” means tangible and intangible property, its proceeds, profits, substitutions, additions, fixtures and accretions for which a receiver is sought.

§ 44-8-4. Grounds for appointing a receiver

A. Upon application to a district court, the district court shall appoint a receiver in an action by a mortgagee or secured party or in any other action based upon a contract or other written agreement, where such mortgage, security agreement, contract or other written agreement provides for the appointment of a receiver.

B. Upon application to a district court, the district court may appoint a receiver:

- (1) when specific statutory provisions authorize the appointment of a receiver;
- (2) in an action between or among persons owning or claiming an interest in the receivership estate;
- (3) in actions where receivers have customarily been appointed by courts of law or equity;
- (4) when a receiver has been appointed for a business entity or other person by a court of competent jurisdiction in another state, and that receiver seeks to collect, take possession or manage assets of the receivership estate located in New Mexico; or
- (5) in any other case where, in the discretion of the district court, just cause exists and irreparable harm may result from failure to appoint a receiver.

§ 44-8-5. Application for appointment of a receiver

A. An applicant may apply to the district court for the appointment of a receiver by motion in an action already pending or by a separate petition or complaint.

B. An application for the appointment of a receiver shall be verified and shall contain:

- (1) a description of the receivership estate, including the estimated gross monthly income if known, for which the applicant seeks a receiver;
- (2) the location of the receivership estate;
- (3) a description of the applicant's interest in the receivership estate;
- (4) a statement showing that venue in the district court is proper;
- (5) a statement of the grounds for the appointment of a receiver; and
- (6) a nomination of the proposed receiver.

C. An ex parte hearing to appoint a receiver may be held without written or oral notice to the adverse party or his attorney only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified application that immediate and irreparable injury, loss or damage will result to the applicant or others before the adverse party's attorney can be heard in opposition; and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the attorney's claim that notice should not be required.

D. Every application, proceeding and order for appointment of a receiver granted without notice shall comply with the Rules of Civil Procedure for the District Courts of New Mexico pertaining to temporary restraining orders and appointment of receivers ex parte.

§ 44-8-6. Qualifications for receivers. A receiver shall meet the following qualifications:

A. the person must be at least eighteen years of age or a corporation or other business entity in good standing authorized to do business in New Mexico;

B. the person must not be otherwise disqualified under applicable state or federal law to administer the receivership estate;

C. before entering on his duties as receiver, the receiver shall sign and file a consent to act as receiver; and

D. upon request and a showing of good cause by an interested party, the district court may require the receiver to post a bond unless the mortgage, security agreement, contract or other written agreement dispenses with the posting of bond. The amount of the bond shall be as ordered by the court.

§ 44-8-7. Powers and duties of receivers. Unless otherwise ordered by the district court, a person who acts as a receiver shall:

A. prepare an inventory of the receivership estate within thirty days of appointment and file that inventory with the district court;

B. collect and manage the receivership estate in a reasonable and prudent manner;

C. file monthly operating reports with the district court and provide copies to all parties who have entered an appearance and allow such parties reasonable access to the books and records of the receivership;

D. enter into contracts reasonably necessary to operate, maintain and preserve the receivership estate;

E. take possession of all available books, records and other documents related to the receivership estate;

F. lease assets of the receivership estate in accordance with the powers and limitations contained in the original order of appointment;

G. bring and defend actions in his capacity as receiver to maintain and preserve the receivership estate;

H. subject to prior order of the district court, engage and retain attorneys, accountants, brokers or any other persons and pay their compensation or fees, sell or mortgage property of the receivership estate, borrow money for the receivership estate, make distributions of receivership proceeds to any party or pay compensation to the receiver; and

I. exercise any other powers expressly granted by statute or an order of the district court.

§ 44-8-8. Compensation. A receiver and an attorney, accountant, broker and other person duly engaged and retained by the receiver shall be entitled to receive reasonable compensation, to be paid from the receivership estate, in a sum to be fixed or approved by the district court, for services rendered to the receivership estate.

§ 44-8-9. Removal, death, resignation, substitution and discharge of receiver; termination of receivership

A. Upon notice and hearing, a receiver may be removed either upon application by an interested person or upon the district court's own motion.

B. The death, resignation or substitution of a receiver, the expiration of a receiver's term of appointment or the dismissal of the action in which a receiver was appointed shall not have the effect of terminating the receivership.

C. A receiver may not resign except by leave of the district court. Leave shall be sought by motion and hearing unless the agreement of all parties obviates the need for a hearing. Leave may provide for the discharge of a receiver, and leave and discharge may be conditioned upon:

- (1) the substitution of another receiver;
- (2) the preparation and filing of a receiver's report;
- (3) the preparation and filing of an accounting;
- (4) the delivery of receivership property, accounts and books to a successor or to a person appointed by the district court;
- (5) the consent of all interested persons;
- (6) the termination of the receivership;
- (7) the conclusion of litigation to which a receiver is party; or
- (8) such other terms as the district court may order.

D. In the event of the death, resignation or removal of a receiver, the district court shall appoint a successor receiver to oversee a receivership estate. A receiver so appointed succeeds to the powers of his predecessor.

E. Upon disposition of the action concerning the receivership estate, the district court shall enter an order that discharges the receiver from his duties and releases him from any claim or demand of any interested person. Upon the termination of the receiver's duties, the receiver shall prepare and file a final report and account of the receivership and serve it upon all parties who have entered an appearance. Any objections to the receiver's final account and report and claims to surcharge must be filed within ten days of service. Upon settlement of the receiver's final account

and report, the district court shall enter an order discharging the receiver from all further duties, releasing him from any claim or demand of any interested person and exonerating any bond that the receiver has been required to post in connection with the receivership.

§ 44-8-10. Appeal and stay of appointment of a receiver. If an appeal is taken from a district court from a judgment or an order appointing a receiver, perfecting of an appeal from such judgment or order shall not stay enforcement of the judgment or order unless a bond, in a sum fixed by the district court, is given and posted on condition that if the judgment or order is affirmed on the appeal, or if the appeal is withdrawn or dismissed, the appellant will pay all costs and damages that the respondent may sustain by reason of the stay in the enforcement of the judgment or order.

Nebraska Receivership Statute **Neb. Stat. Ann. §§ 25-1081 to 25-1092**

§ 25-1081. Appointment of receiver; grounds. A receiver may be appointed by the district court (1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his or her claim, or between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured, (2) in an action for the foreclosure of a mortgage or in an action to foreclose a trust deed as a mortgage when the mortgaged property or property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt secured by the mortgage or trust deed, (3) in connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default under the Nebraska Trust Deeds Act when the property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the debt secured by the trust deed, (4) in an action brought pursuant to section 52-1705 to enforce a written assignment of rents provision contained in any agreement and the agreement provides for the appointment of a receiver, (5) in any other case in which a mortgagor or trustor has agreed in writing to the appointment of a receiver, (6) after judgment or decree to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal, (7) in all cases provided for by special statutes, and (8) in all other cases when receivers have heretofore been appointed by the usages of courts of equity.

§ 25-1082. Notice of application for appointment; service. No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver, and of his or her proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served at least five days before the proposed hearing upon the adverse party in the manner provided for service of a summons in a civil action or upon the adverse party's attorney in the manner provided for service of a notice on an attorney.

§ 25-1083. Property; possession by sheriff; when authorized; restitution. Should the delay occasioned by the giving of the notice provided for in section 25-1082 be hazardous to the rights of any party, the court or judge may, by order, direct the sheriff of the county in which such

action is pending to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if at such hearing the application is refused, restitution shall be made of the property to the party from whom the same was taken.

§ 25-1084. Applicants for receiver; bonds required; contents; filing. Every order appointing a receiver shall require the applicant to give a good and sufficient bond, conditioned to pay all damages which the other parties to the suit or any of them may sustain by reason of the appointment of a receiver, in case it shall be finally decided that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver and obey all orders of the court. The bonds shall each run to the defendant and all adverse parties in interest, shall be for the use of any party to the suit, shall be in a penal sum to be fixed by the court, but not, however, to be in excess of a sum equal to double the value of the property in question, shall be executed by one surety where such surety is an incorporated surety company authorized by the laws of this state to transact such business, and by two or more sureties where such sureties are natural persons, to be approved by the court or judge making the appointment, and shall be filed in the office of the clerk of the district court; nor shall the same be considered executed until they are so filed.

§ 25-1085. Application; form; content. If a complainant desires the appointment of a receiver at the commencement of the action, the complainant shall request such appointment in the complaint. If the occasion for a receiver arises while the suit is pending, the application shall be made by a motion setting forth the facts and circumstances making such appointment necessary or proper.

§ 25-1086. Qualifications of receiver; sureties; objections; nomination by other parties. Any party to the suit may, upon the hearing of the application, show, by affidavit or otherwise, objections to the proposed sureties and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time the names of his proposed sureties. No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.

§ 25-1087. Order of appointment; special directions. Every order appointing a receiver shall contain special directions in respect to his powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the court or judge as may in the further progress of the cause become proper.

§ 25-1088. Receivers; extent of representation. Every receiver shall be considered the receiver of any party to the suit, and no others.

§ 25-1089. Appointment of receiver without notice; void. Every order appointing a receiver without the notice provided for herein shall be void, and every such order heretofore made, under which the appointee has not possessed himself of the property in question, shall be suspended until an order shall have been made and the bonds executed and filed in accordance with the provisions of sections 25-1081 to 25-1092.

§ 25-1090. Inconclusive decree; appointment of master; disposition of property; orders; appeal. When a decree is rendered in a suit in which a receiver has been appointed and such decree does not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof in the receiver's hands. If such application is resisted, the matter may be referred to a master to take and report to the court the testimony of the parties. Upon the filing of the report, the court shall, by its order, award the possession of the property and the proceeds thereof to the party entitled thereto, and thereupon the receiver shall surrender the property and the proceeds thereof to such party. All orders appointing receivers, giving them further directions, and disposing of the property may be appealed to the Court of Appeals in the same manner as final orders and decrees.

§ 25-1091. Receivers; disobedience of orders; punishment; sheriff may act. Whenever, in the exercise of their authority, the court or judge shall have ordered the deposit or delivery of money or other things, and the order is disobeyed, the court or judge, in addition to punishing such disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court or judge.

§ 25-1092. Receivers; compensation. Receivers shall receive for their services such compensation as the court may award, subject to the following restrictions:

- (1) Receivers appointed for the purpose of preserving and protecting property pending litigation, or for the purpose of continuing the business of the debtor or corporation pending litigation, or when financially embarrassed, may be awarded a salary or lump sum;
- (2) Receivers appointed for the purpose of winding up the affairs of a debtor or corporation, reducing the assets to cash and distributing them, shall be awarded as compensation for such services a percentage upon the cash received and properly accounted for by them, which percentage may be increased where extraordinary services have been performed, and correspondingly reduced where the services have not been meritoriously performed.

Indiana Receivership Statute

Ind. Code §§ 32-30-5-1 to 32-30-5-22

§ 32-30-5-1. Appointment; cases where authorized. A receiver may be appointed by the court in the following cases:

- (1) In an action by a vendor to vacate a fraudulent purchase of property or by a creditor to subject any property or fund to the creditor's claim.
- (2) In actions between partners or persons jointly interested in any property or fund.
- (3) In all actions when it is shown that the property, fund or rent, and profits in controversy are in danger of being lost, removed, or materially injured.

(4) In actions in which a mortgagee seeks to foreclose a mortgage. However, upon motion by the mortgagee, the court shall appoint a receiver if, at the time the motion is filed, the property is not occupied by the owner as the owner's principal residence and:

- (A) it appears that the property is in danger of being lost, removed, or materially injured;
- (B) it appears that the property may not be sufficient to discharge the mortgaged debt;
- (C) either the mortgagor or the owner of the property has agreed in the mortgage or in some other writing to the appointment of a receiver;
- (D) a person not personally liable for the debt secured by the mortgage has, or is entitled to, possession of all or a portion of the property;
- (E) the owner of the property is not personally liable for the debt secured by the mortgage;
or
- (F) all or any portion of the property is being, or is intended to be, leased for any purpose.

(5) When a corporation:

- (A) has been dissolved;
- (B) is insolvent;
- (C) is in imminent danger of insolvency; or
- (D) has forfeited its corporate rights.

(6) To protect or preserve, during the time allowed for redemption, any real estate or interest in real estate sold on execution or order of sale, and to secure rents and profits to the person entitled to the rents and profits.

(7) In other cases as may be provided by law or where, in the discretion of the court, it may be necessary to secure ample justice to the parties.

§ 32-30-5-2. Persons ineligible for appointment. A court may not appoint:

- (1) a party;
 - (2) an attorney representing a party; or
 - (3) another person interested in an action;
- as a receiver in that action.

§ 32-30-5-3. Oath of office; undertaking. Before beginning duties as a receiver, the receiver must:

- (1) swear to perform the duties of a receiver faithfully; and
- (2) with one (1) or more sureties approved by the court or judge, execute a written undertaking, payable to such person as the court or the judge directs, to the effect that the receiver will:
 - (A) faithfully discharge the duties of receiver in the action; and
 - (B) obey the orders of the court or judge.

§ 32-30-5-4. Possession of money; order of court; security. If it is admitted by the pleading or examination of a party that the party has in the party's possession or under the party's control any money or other thing capable of delivery, which:

- (1) is the subject of the litigation;
- (2) is held by the party as trustee for another party; or
- (3) belongs or is due to another party;

the court or the judge may order the money or thing to be deposited in court or with the clerk, or delivered to the other party, with or without security, subject to the further order of the court or the judge.

§ 32-30-5-5. Order of court; contempt; deposit by sheriff. If:

- (1) in the exercise of its authority, a court or judge has ordered the deposit or delivery of money or another thing; and
- (2) the order is disobeyed;

the court or the judge, besides punishing the disobedience as contempt, may make an order requiring the sheriff to take the money or thing and deposit it or deliver it in conformity with the direction of the court or judge.

§ 32-30-5-6. Loans; consent. Money deposited or paid into court or with the clerk in an action may not be loaned out unless consent is obtained from all parties having an interest in or making claim to the money.

§ 32-30-5-7. Powers and duties. The receiver may, under control of the court or the judge:

- (1) bring and defend actions;
- (2) take and keep possession of the property;
- (3) receive rents;
- (4) collect debts; and
- (5) sell property;

in the receiver's own name, and generally do other acts respecting the property as the court or judge may authorize.

§ 32-30-5-8 Answer admitting part of claim; satisfaction. If the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order by execution.

§ 32-30-5-9. Appointment; appearance; notice; affidavit. Receivers may not be appointed in any case until the adverse party has appeared or has had reasonable notice of the application for the appointment, except upon sufficient cause shown by affidavit.

§ 32-30-5-10. Appeal to supreme court

(a) In all cases commenced or pending in any Indiana court in which a receiver may be appointed or refused, the party aggrieved may, within ten (10) days after the court's decision, appeal the court's decision to the supreme court without awaiting the final determination of the case.

(b) In cases where a receiver will be or has been appointed, upon the appellant filing of an appeal bond:

(1) with sufficient surety;

(2) in the same amount as was required of the receiver; and

(3) conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to any officer or person because of the appeal;

the authority of the receiver shall be suspended until the final determination of the appeal.

§ 32-30-5-11. Information required; proof of appointment unnecessary. In any suit or action by a receiver appointed by any court of record in Indiana, it is only necessary for the receiver, in the receiver's complaint or pleading, to state:

(1) the court;

(2) the cause of action in which the receiver was appointed; and

(3) the date on which the receiver was appointed.

Proof of the appointment is not required on the trial of the cause unless the appointment is specially denied, in addition to the general denial filed in the cause.

§ 32-30-5-12. Record book. The clerk of the court of each county shall keep a record book suitable to enter and record statements of assets and liabilities.

§ 32-30-5-13. Claims against assets; filing. All claims against the assets in the hands of the receiver that are filed with the receiver shall be filed by the receiver with the clerk of the court in which the receivership is pending. The clerk shall record the claims with the statements under this chapter, resulting in a complete record of the assets and liabilities of the receivership.

§ 32-30-5-14. Filing of account or report required. In all receiverships pending or begun in any court, the receiver, within the time as may be fixed by an order of the court in which the receivership is pending, shall file with the court an account or report in partial or final settlement of the liquidation or receivership proceedings.

§ 32-30-5-15. Contents of account or report. The account or report required by section 14 of this chapter must set forth all:

- (1) receipts and disbursements to the date of the accounting; and
- (2) other appropriate information relative to the:
 - (A) administration of the receivership;
 - (B) liquidation of the receivership; and
 - (C) declaration and payment of dividends.

§ 32-30-5-16. Petition for order requiring filing of account. If an account is not filed within one (1) year after the date when the receiver took possession of the assets and effects of the receivership, any party interested may petition the court for an order requiring the filing of an account.

§ 32-30-5-17. Notice of hearing on account or report

(a) Except as provided in subsection (d), upon the filing of an account or report, the clerk of the court in which the receivership is pending shall give notice of the date on which the account or report is to be heard and determined by the court.

(b) The clerk shall give the notice required by subsection (a) by publication, once each week for three (3) successive weeks in two (2) newspapers of general circulation published or circulated within the county.

(c) The date in the notice on which the account or report is to be heard and determined by the court shall be fixed not less than thirty (30) days after the date of the filing of the account or report.

(d) Publication is not required under this section if the receivership is ancillary to a mortgage foreclosure.

§ 32-30-5-18. Objections or exceptions

(a) During the thirty (30) day period referred to in section 17 of this chapter, any creditor, shareholder, or other interested party may file objections or exceptions in writing to the account or report.

(b) Any objections or exceptions to the matters and things contained in an account or report and to the receiver's acts reported in the report or account that are not filed within the thirty (30) day period referred to in section 17 of this chapter are forever barred for all purposes.

§ 32-30-5-19. Hearing on account or report. At the expiration of the thirty (30) day period referred to in section 17 of this chapter, the court shall, without delay:

- (1) proceed with the hearing and determination of the objections or exceptions;
- (2) pass upon the account or report;
- (3) order the payment of a partial or final dividend; and
- (4) make other appropriate orders.

§ 32-30-5-20. Approval of partial account or report. The court's approval of a receiver's partial account or report, as provided in section 14 of this chapter, releases and discharges the receiver and the surety on the receiver's bond for all matters and things related to or contained in the partial account or report.

§ 32-30-5-21. Approval of final account or report and performance and compliance with court order. Upon the:

- (1) court's approval of the receiver's final account or report, as provided in section 14 of this chapter; and
- (2) receiver's performance and compliance with the court's order made on the final report;

the receiver and the surety on the receiver's bond shall be fully and finally discharged and the court shall declare the receivership estate finally settled and closed subject to the right of appeal of the receiver or any creditor, shareholder, or other interested party who has filed objections or exceptions as provided in section 18 of this chapter.

§ 32-30-5-22. Entitlement to change of judge or venue

(a) This section applies to any action, proceeding, or matter relating to or involving a receivership estate.

(b) Except as provided in subsections (c) and (d), a party to a proceeding described in subsection (a) is entitled to a change of judge or a change of venue from the county for the same reasons and upon the same terms and conditions under which a change of judge or a change of venue from the county is allowed in any civil action.

(c) This section does not authorize a change of venue from the county:

- (1) concerning expenses allowed by the court incidental to the operation, management, or administration of the receivership estate;
- (2) upon any petition or proceeding to remove a receiver; or

- (3) upon the objections or exceptions to any partial or final account or report of any receiver.
- (d) A change of venue is not allowed from the county of the administration of any receivership estate, or upon any petition or proceeding to remove a receiver, or upon objections or exceptions to a partial or final account or report of a receiver.

California Receivership Statute **Cal. Code Civ. Proc. §§ 564 to 570**

§ 564. Appointment; cases in which authorized; definitions

- (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.
- (b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:
- (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.
 - (2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.
 - (3) After judgment, to carry the judgment into effect.
 - (4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.
 - (5) Where a corporation has been dissolved, as provided in Section 565.
 - (6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
 - (7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section 855 or 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means any of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

§ 565. Appointment upon dissolution of corporation. Upon the dissolution of any corporation, the Superior Court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

§ 566. Persons ineligible to appointment; consent; undertaking on ex parte application

(a) No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk.

(b) If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause.

§ 567. Oath and undertaking of receiver. Before entering upon the duties of a receiver:

(a) The receiver must be sworn to perform the duties faithfully.

(b) The receiver shall give an undertaking to the State of California, in such sum as the court or judge may direct, to the effect that the receiver will faithfully discharge the duties of receiver in

the action and obey the orders of the court therein. The receiver shall be allowed the cost of the undertaking.

§ 568. Powers. The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize.

§ 568.1. Deposit of securities in securities depository. Any securities in the hands of a receiver may, under the control of the court, be deposited by the receiver in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code, and such securities may be held by such securities depository in the manner authorized by Section 775 of the Financial Code.

§ 568.2. Notification to court of order or notice to correct substandard or unsafe condition of rental housing

(a) A receiver of real property containing rental housing shall notify the court of the existence of any order or notice to correct any substandard or unsafe condition, as defined in Section 17920.3 or 17920.10 of the Health and Safety Code, with which the receiver cannot comply within the time provided by the order or notice.

(b) The notice shall be filed within 30 days after the receiver's appointment or, if the substandard condition occurs subsequently, within 15 days of its occurrence.

(c) The notice shall inform the court of all of the following:

(1) The substandard conditions that exist.

(2) The threat or danger that the substandard conditions pose to any occupant of the property or the public.

(3) The approximate cost and time involved in abating the conditions. If more time is needed to approximate the cost, then the notice shall provide the date on which the approximate cost will be filed with the court and that date shall be within 10 days of the filing.

(4) Whether the receivership estate is likely to contain sufficient funds to abate the conditions.

(d) If the receivership estate does not contain sufficient funds to abate the conditions, the receiver shall request further instructions or orders from the court.

(e) The court, upon receipt of a notice pursuant to subdivision (d), shall consider appropriate orders or instructions to enable the receiver to correct the substandard conditions or to terminate or limit the period of receivership.

§ 568.3. Motion in receivership actions; who may file motion; conditions. Any tenant of real property that is subject to receivership, a tenant association or organization, or any federal, state, or local enforcement agency, may file a motion in a receivership action for the purpose of seeking further instructions or orders from the court, if either of the following is true:

(a) Substandard conditions exist, as defined by Section 17920.3 or 17920.10 of the Health and Safety Code.

(b) A dispute or controversy exists concerning the powers or duties of the receiver affecting a tenant or the public.

§ 568.5. Sales; authority; manner; confirmation. A receiver may, pursuant to an order of the court, sell real or personal property in the receiver's possession upon the notice and in the manner prescribed by Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9. The sale is not final until confirmed by the court.

§ 569. Interest bearing accounts; deposit of funds; conditions. Funds in the hands of a receiver may be deposited in one or more interest bearing accounts in the name and for the benefit of the receivership estate with one or more financial institutions, provided that all of the following conditions are satisfied:

(a) The deposits are fully guaranteed or insured under federal law.

(b) The financial institution in which the funds are deposited is not a party to the action in which the receiver was appointed.

(c) The receiver does not own 1 percent or more in value of the outstanding stock of the financial institution, is not an officer, director, or employee of the financial institution, and is not a sibling, whether by the whole or half-blood, spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an owner, officer, employee, or director.

§ 570. Unclaimed funds; publication of notice; payment to State Treasury; rights of owner; expense of notice. A receiver having any funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as such receiver, publish a notice, in one or more newspapers published in the county, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of such owner and the amount of such unclaimed funds. Any funds remaining in his hands unclaimed for 30 days after the date of the last publication of such notice, shall be reported to the court, and upon order of the court, all such funds must be paid into the State Treasury accompanied with a copy of the order, which must set forth the facts required in the notice herein provided. Such funds shall be deemed to have been received by the State under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of this code and may be recovered in the manner prescribed therein.

All costs and expenses connected with such advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

Appendix 3

28 U.S.C.A. § 2001 et. seq. Sale of Real Property by Federal Receiver

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

§ 2002. Notice of sale of realty. A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the

property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

§ 2004. Sale of personalty generally. Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.