

1 **MEMORANDUM**

2 TO: Drafting Committee, Advisors, and Observers – Uniform Commercial Real Estate  
3 Receiverships Act

4 CC: Harriett Lansing, Richard Cassidy, Anita Ramasastry, Lane Shetterly, John  
5 Sebert, and Ben Orzeske

6 FROM: Thomas S. Hemmendinger, Chairperson, and R. Wilson Freyermuth, Reporter

7 DATE: January 28, 2015

8 RE: Redline comparison of the January 28, 2015 Meeting Draft to the October 6, 2014  
9 Draft

---

11 For your convenience, here is a redline comparison of the latest version of the Act to the draft for  
12 our prior meeting in November 2014.

13 This comparison is an informal document, meant only as an aid to your review of the current  
14 draft, and to give you an idea of where changes have been made. The January 28, 2015 draft is  
15 the definitive document that we'll work from at our February 20 and 21, 2015 meeting.

16 We hope you find it useful.  
17

18 **~~MODEL~~ UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIPS ACT**

19 **SECTION 1. SHORT TITLE.** This [act] may be cited as the ~~Model~~ Uniform  
20 Commercial Real Estate Receiverships Act.

21 **SECTION 2. DEFINITIONS.** In this [act]:

22 (1) "Affiliate" means:

23 (A) with respect to an individual:

24 (i) the spouse [or domestic partner] of the individual;

25 (ii) a sibling of the individual or the spouse [or domestic partner] of a  
26 sibling;

27 (iii) a person or the spouse [or domestic partner] of a person who is a

1 lineal ancestor or lineal descendant of the individual or the individual's spouse [or domestic  
2 partner];

3 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,  
4 grandniece, or grandnephew of the individual, whether related by the whole or the half blood or  
5 adoption, or the spouse [or domestic partner] of any of them; or

6 (v) any other person occupying the residence of the individual; and

7 (B) with respect to a person other than an individual:

8 (i) another person that directly or indirectly controls, is controlled by, or is  
9 under common control with the person;

10 (ii) an officer, director, manager, member, partner, employee, or trustee or  
11 other fiduciary of the person; or

12 (iii) the spouse [or domestic partner] of, or a person occupying the  
13 residence of, an individual described in subparagraphs (i) and (ii).

14 ~~(2) "After notice and a hearing" means after the notice and opportunity for a hearing~~  
15 ~~appropriate in the particular circumstances.~~

16 ~~(3) "Assignee of rents" means a person entitled to enforce an assignment of rents.~~

17 ~~(4) "Assignment of rents" means a transfer of an interest in rents in connection with an~~  
18 ~~obligation secured by real property located in this state from which the rents arise.~~

19 ~~(5) "Assignor of rents" means a person that executes an assignment of rents or a~~  
20 ~~successor in ownership of the real property described in the assignment.~~

21 ~~(6-2)~~ "Court" means [identify court of general equity jurisdiction in this state].

22 ~~(7-3)~~ "Executory contract" means a contract, including a lease, under which the  
23 obligations of all parties are not fully performed and the failure of a party to complete

performance of its obligations would constitute a material breach.

(8-4) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(9-5) “Governmental unit” means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

(10-6) “Lien” means an interest in property that secures payment or performance of an obligation.

(11-7) “Mortgage” means a record, however denominated, that creates or provides for a ~~security interest~~ lien in real property or rents, whether or not it also creates or provides for a ~~security interest~~ lien in personal property.

(12-8) “Mortgagee” means a person that holds a mortgage.

(13-9) “Mortgagor” means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

(14-10) “Owner” means the person for whose property a receiver is appointed.

(15-11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(16-12) “Property” means all of a person’s right, title, and interest, both legal and equitable, in real and personal property, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the original property.

(17-13) “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 [act] or order of the court, dispose of receivership property.

(18-14) "Receivership" means a proceeding in which a receiver is appointed.

(19-15) "Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order, and includes any proceeds from the sale, lease, license, exchange, or other disposition of the property.

(20-16) "Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(21-17) "Rents" means:

(A) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(B) sums payable to an assignor under a policy of rental interruption insurance covering real property;

(C) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(D) sums payable to terminate an agreement to possess or occupy real property of another person;

(E) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(F) any other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this [act].

(22-18) "Secured obligation" means an obligation the payment or performance of which is secured by a mortgage, ~~assignment of rents~~ a security agreement, or both.

(23-19) "Security agreement" means an agreement that creates or provides for a ~~security~~

1 ~~interest~~ lien.

2 (24) ~~“Security interest” means an interest in property that arises by agreement and~~  
3 ~~secures payment or performance of an obligation.~~

4 (25-20) “Sign” means, with present intent to authenticate or adopt a record:

5 (A) to execute or adopt a tangible symbol; or

6 (B) to attach to or logically associate with the record an electronic sound, symbol,  
7 or process.

8 (26-21) “State” means a state of the United States, the District of Columbia, Puerto Rico,  
9 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
10 of the United States.

11 **SECTION 3. NOTICE AND OPPORTUNITY FOR A HEARING.**

12 (a) In this section, “after notice and an opportunity for a hearing” means after such notice  
13 and such opportunity for a hearing as are appropriate in the particular circumstances.

14 (b) The court may issue an order under this [act] only after notice and an opportunity for  
15 a hearing. The court may issue an order:

16 (1) without a hearing if no interested party timely requests a hearing; or

17 (2) before a hearing if the particular circumstances require the issuance of an  
18 order before a hearing can be held.

19 **SECTION 3. 4. SCOPE; EXCLUSIONS.**

20 (a) Except as otherwise provided in ~~this section~~, subsection (b) or (c), this [act] applies to  
21 a receivership for an interest in real property and personal property related to the real property or  
22 used in its operation.

23 (b) This [act] does not apply to a receivership for an interest in real property improved

by one to four dwelling units unless:

(1) the ~~property interest is configured for use for~~ agricultural, commercial, or industrial, or mineral extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

(2) the interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral extraction purposes;

(2-3) the owner planned to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

(3-4) the owner is collecting or has the right to collect rents or other income from the property from a ~~tenant or occupier~~ person other than an affiliate of the owner.

(c) This [act] does not apply to a receivership authorized by law of this state other than this [act] in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit [except to the extent provided by the other law].

(d) This [act] does not limit the authority of a court to appoint a receiver under law of this state other than this [act].

(e) Unless displaced by a particular provision of this [act], ~~statutes of this state other than this [act] and~~ the principles of law and equity supplement this [act].

*Legislative Note: In many states, there may be existing statutory provisions under which a governmental unit or governmental official may be appointed as a receiver for specific types of organizations such as hospitals, insurance companies, or other organizations affected with some public interest. The provisions of this [act] generally would not govern such receiverships, but the bracketed language in subsection (c) would permit a state to modify its existing statutory provisions for such receiverships to incorporate some or all of the provisions of this Act.*

**SECTION 4-5. POWER OF COURT.** The court that appoints a receiver under this [act] has exclusive jurisdiction to direct ~~a~~ the receiver and determine any controversy related to ~~a~~ the receivership ~~under this [act]~~ or receivership property.

**Legislative Note:** *Section 5 is appropriate in a state where a court in one county, circuit, or district may issue orders with statewide effect and has the power to act on property located in another county, circuit or district within the state. In a state where a court in one county, circuit, or district may appoint a receiver but order entered by the court in that county, circuit, or district lack statewide effect, the state should modify Section 5 to make clear that orders of a court appointing a receiver under this Act shall have statewide effect.*

**SECTION ~~5-~~6. APPOINTMENT.**

(a) ~~After notice and a hearing, the~~ The court may appoint a receiver:

(1) before judgment, to protect a party that demonstrates an apparent right to real property that is the subject of the action, if the property or its revenue-producing potential ~~is:~~

(A) is being subjected to, or is in danger of, waste, loss, dissipation, or impairment; or

(B) ~~is in danger of loss or material impairment; or~~

~~(C)~~ has been or may be the subject of a voidable transaction.

(2) after judgment:

(A) to carry the judgment into effect; or

(B) to preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment; [and]

~~(3) connection with foreclosure of a mortgage or enforcement of an assignment of rents that is in default, as necessary to protect the mortgaged property or rents arising from the property from waste, loss, transfer, or dissipation;~~

~~(4) in an action against a person that is not an individual if:~~

~~(A) the object of the action is the dissolution of the person;~~

~~(B) the person has been dissolved; or~~

~~(C) the person is insolvent or generally is not paying the person's debts as~~

~~those debts become due [unless the debts are the subject of bona fide dispute]; [and]~~

~~(5)~~ in other actions in which receivers for real property may be appointed on equitable grounds [; and

~~(6)~~ (4) during the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to the rents].

(b) ~~{In connection with the foreclosure of a mortgage or other enforcement of an assignment of rents, a mortgage, [a mortgagee or assignee of rents is entitled to appointment of][the court may appoint] a receiver for the mortgaged property if there is a default under the mortgage or assignment and:~~

(1) appointment is necessary to protect the mortgaged property or rents arising from the property from waste, loss, transfer, dissipation, or impairment;

(2) the mortgagor ~~or assignor of rents~~ agreed in a signed record to the appointment of a receiver in the event of default;

~~(2-3)~~ the owner otherwise agreed in a signed record to the appointment of a receiver;

~~(3-4)~~ the property for which the receivership is sought is not sufficient, along with other collateral held by the mortgagee ~~or assignee~~, to satisfy the secured obligation;

~~(4-5)~~ the owner fails to turn over to the mortgagee ~~or assignee~~ any rents the mortgagee ~~or assignee~~ was entitled to collect; or

~~(5-6)~~ the holder of a subordinate creditor lien obtains appointment of a receiver for the property.

~~(c) The court may appoint a receiver ex parte if the person seeking the appointment establishes that the circumstances justify immediate appointment. If the court appoints a receiver~~

1 ~~ex parte, the court shall set a hearing to be held as soon as practicable after the appointment.~~ The  
2 court may condition the ex parte appointment of a receiver on the giving of security by the  
3 person seeking the appointment, in the amount the court specifies, for the payment of damages,  
4 including costs and reasonable attorneys' fees, incurred or suffered by any person if the court  
5 finds that the appointment was not justified. ~~If, after notice and a hearing,~~ the court finds that the  
6 ex parte appointment was justified, the court shall release the security.

7 **Legislative Note:** *Subsection (b) includes bracketed alternatives. Under the first, a mortgagee*  
8 *would be entitled to appointment of a receiver under the six circumstances listed in subsection*  
9 *(b); under the second, these six circumstances would justify the appointment of a receiver, but*  
10 *such appointment would be subject to the court's discretion rather than an entitlement. Under*  
11 *section 7 of the Uniform Assignment of Rents Act (UARA), an assignee of rents is entitled to*  
12 *appointment of a receiver under the circumstances expressed in subsection (b). Thus, in*  
13 *jurisdictions that have enacted UARA, subsection (b) should use the first bracketed alternative*  
14 *under which the mortgagee is "entitled" to appointment, to avoid the risk that adoption of this*  
15 *[act] might create an implied repeal of UARA section 7.*  
16

## 17 **SECTION 6. 7. IDENTITY OF RECEIVER; DISCLOSURE OF INTEREST.**

18 (a) ~~{Except by consent of all parties in a signed record, the}~~ ~~{The}~~ court may not appoint  
19 a person as receiver unless the person provides evidence under penalty of perjury that the person  
20 is independent.

21 (b) A person is not independent under subsection (a) if the person:  
22 (1) is an affiliate of a party;  
23 (2) has an interest materially adverse to the interests of a party;  
24 (3) has a material financial interest in the outcome of the action, other than  
25 compensation the court may allow to the receiver;  
26 (4) has a debtor-creditor relationship with a party; or  
27 (5) holds an equity interest in a party, other than a noncontrolling interest in a  
28 publicly-traded company.

(c) Notwithstanding subsection (b), a person is not disqualified under subsection (a) from appointment as receiver solely because the person:

(1) was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the ~~underlying dispute~~ receivership; or

(2) is an individual obligated to a party on a debt which is not in default and was incurred primarily for personal, family, or household purposes.

(d) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

#### **SECTION 7. ~~8.~~ RECEIVER'S BOND.**

~~(a) Except as otherwise provided in subsection (b), [before a receiver commences the receiver's duties] [not later than [five] days after a receiver commences the receiver's duties], the receiver shall execute a bond.~~ The receiver shall post with the court a bond, effective as of the date of the receiver's appointment, in the amount the court specifies, with one or more sureties approved by the court, conditioned on the receiver's faithful discharge of the receiver's duties in accordance with the orders of the court and law of this state. ~~Unless the court orders otherwise, the receiver's bond runs in favor of all persons that have an interest in the receivership property.~~ The court may authorize the receiver to act before the receiver has posted the bond.

~~(b) The court may approve the posting with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.~~

~~(c)~~ (e) A claim against a receiver's bond ~~or alternative security~~ must be made not later than

[one year] after the date the receiver is discharged.

**Legislative Note:** *Section 23 of this [act] provides that the court's approval of the receiver's final report discharges the receiver for all matters contained in the report. Approval of the receiver's final report, however, does not absolve the receiver for actions taken during the period in which the bond was in place but which were not disclosed or discovered until after the receiver's discharge. Subsection (b) creates a limitations period for claims against the bond based on such actions by the receiver. The time period for this limitations period should be identical to the state's limitations period for obtaining relief from a judgment.*

**SECTION 8. 9. RECEIVER'S STATUS AS LIEN CREDITOR.** At the time a receiver is appointed, the receiver has the status of a lien creditor:

(1) under [Uniform Commercial Code Article 9] as to receivership property that is personal property or fixtures; and

(2) under [the recording statute of this state] as to receivership property that is real property.

**SECTION 9. 10. ~~SECURITY INTEREST IN~~ SECURITY AGREEMENT COVERING AFTER-ACQUIRED PROPERTY.** Except as otherwise provided by law of this state other than this [act], property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed a receiver.

**SECTION 10. 11. COLLECTION AND TURNOVER OF RECEIVERSHIP PROPERTY.**

(a) Unless the court orders otherwise, on demand by a receiver:

(1) a person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(2) subject to subsection (b), a person that has possession, custody, or control of

receivership property shall turn the property over to the receiver.

(b) A person that has notice of the receiver's appointment and owes a debt that is receivership property may not satisfy that debt by payment to the owner.

(c) If a creditor has possession, custody, or control of receivership property and the validity or perfection of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court enters an order providing adequate protection of the creditor's lien.

(ed) Unless there is a bona fide dispute with respect to a receiver's right to possession, custody, or control of receivership property, the court may sanction a person's failure to turn the property over when required by this section as a civil contempt of court.

**SECTION ~~11~~, 12. POWERS AND DUTIES OF RECEIVER.**

(a) Except as limited in ~~the order appointing~~ any order of the court that appointed a receiver or by law of this state other than this [act], a receiver may:

(1) collect, control, manage, conserve, and protect ~~tangible and intangible~~ receivership property;

(2) operate a business constituting receivership property, including the preservation, use, sale, lease, collection, license, or other disposition of the property in the ordinary course of business;

(3) in the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, collection, license, or other disposition of receivership property;

(4) assert a right, claim, cause of action, or defense of the owner that relates to receivership property;

(5) seek and obtain instruction from the court concerning receivership property, the exercise of the receiver's powers, or performance of the receiver's duties;

(6) by subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated documents or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(7) engage professionals as provided in Section ~~14~~15;

(8) apply to a court of another state for appointment as {ancillary} receiver with respect to receivership property located in that state; and

(9) exercise any power ~~specifically conferred by the order appointing the receiver, this [act], or law of this state other than this [act]~~ conferred by this [act] or any order of the court that appointed the receiver.

(b) ~~If authorized by the court after notice and a hearing, or as otherwise permitted by this [act],~~ With court approval, a receiver may:

(1) incur debt for the use or benefit of the receivership other than in the ordinary course of business;

(2) recommend allowance or disallowance of a claim of a creditor as provided in Section 20;

(3) make a distribution of receivership property or the proceeds of receivership property as provided in Section ~~15 or 16~~ 20;

(4) pay compensation to the receiver as provided in Section 19 or ~~22~~23, or to each professional engaged by the receiver as provided in Section ~~14~~15;

(5) make improvements to receivership property;

(6) adopt or reject an executory contract of the owner as provided in Section 17;

and

(7) use or transfer receivership property other than in the ordinary course of business as provided in Section ~~15~~ 16.

(c) A receiver shall:

(1) prepare and retain appropriate business records, including records of all receipts, disbursements, and other dispositions of receivership property;

(2) account for receivership property, including the proceeds of a sale, lease, collection, license, or other disposition of the property;

(3) file with the [appropriate real property recording office] a copy of the order appointing the receiver, together with a legal description of the real property if a description is not included in the order; and

(4) perform any duty imposed by court order, this [act], or law of this state other than this [act].

(d) The powers and duties of a receiver may be expanded, modified, or limited by court order.

**SECTION ~~12~~ 13. DUTIES OF OWNER.**

(a) An owner shall:

(1) assist and cooperate fully with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(2) preserve and turn over to the receiver all tangible and intangible receivership property in the owner's possession, custody, or control;

(3) make available to the receiver all documents and information relating to

1 receivership property, including passwords and other information needed to obtain or maintain  
2 access to or control of receivership property;

3 (4) by subpoena, submit to examination under oath by the receiver, ~~under oath~~,  
4 concerning the acts, conduct, property, liabilities, and financial condition of the owner or any  
5 matter relating to receivership property or the receivership; and

6 (5) perform any duty imposed by court order, this [act], or law of the state other  
7 than this [act].

8 (b) If an owner is a person other than an individual, this section applies to each officer,  
9 director, manager, member, partner, trustee, or other individual exercising or having the power to  
10 exercise control over the affairs of the owner.

11 (c) If a person knowingly fails to perform a duty imposed by this section, the court may:

12 (1) award the receiver actual damages caused by the person's failure, including  
13 costs and reasonable attorney's fees; and

14 (2) sanction the failure as a civil contempt of court.

15 **~~SECTION 13.~~ 14. ~~AUTOMATIC STAY.~~**

16 (a) Except as otherwise provided in subsection (d) or ordered by the court, an order  
17 appointing a receiver operates as a stay, applicable to all persons, of:

18 (1) an act to obtain possession of, exercise control over, or enforce a judgment  
19 against receivership property; and

20 (2) an act to ~~create, perfect, or enforce~~ a lien against receivership property to the  
21 extent the lien secures a claim against the owner which arose before entry of the order.

22 (b) In addition to the stay provided in subsection (a), ~~after notice and a hearing~~, the court  
23 may order a stay of an act, action, or proceeding against or relating to receivership property if

necessary to protect the property and facilitate administration of the receivership.

(c) A person whose act, action, or proceeding is stayed under this section may apply to the court for relief from the stay for cause.

(d) A stay under subsection (a) or entry of an order staying an act, action, or proceeding under subsection (b) does not operate as a stay of:

(1) an act to foreclose ~~a mortgage or enforce an assignment of rents~~ or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(2) an act to perfect, or maintain or continue the perfection of, an interest in receivership property ~~to the extent the rights of a lien creditor are subject to perfection under law of this state other than this [act];~~

(3) commencement or continuation of a criminal proceeding;

(4) commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power; or

(5) establishment by a governmental unit of a tax liability and an appeal of the liability.

(e) On motion of a party, the court may declare void an act that violates a stay under this section.

(f) If a person knowingly violates a stay under this section, the court may:

(1) award the receiver actual damages caused by the violation, including costs and reasonable attorney's fees; and

(2) sanction the violation as a civil contempt of court.

**SECTION ~~14.~~ 15. ENGAGEMENT AND COMPENSATION OF PROFESSIONAL.**

(a) With court approval in the order appointing a receiver, or otherwise ~~after notice and a hearing~~, the receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing the receiver's duties. The receiver shall disclose to the court the identity and qualifications of the professional, the scope and nature of the proposed engagement, the proposed compensation, and any potential conflict of interest. A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or other party if the court finds the engagement is appropriate. This [act] does not preclude the receiver from ~~providing services~~ serving as an attorney, accountant, auctioneer, or broker when licensed to do so.

(b) A receiver or a professional engaged under subsection (a) ~~may~~ shall file with the court an itemized statement of the time spent, work performed, billing rates of all persons that performed the work, and an itemized list of expenses. With court approval ~~after notice and a hearing~~, the receiver shall pay the amounts itemized in the statement.

**SECTION ~~15-16~~ 16. USE, SALE, LEASE, LICENSE OR OTHER TRANSFER OF RECEIVERSHIP PROPERTY OTHER THAN IN ORDINARY COURSE OF BUSINESS.**

(a) With court approval ~~after notice and a hearing~~, a receiver may use receivership property other than in the ordinary course of business.

**Alternative A**

~~—— (b) With court approval after notice and a hearing, a receiver may sell, lease, license, or otherwise transfer receivership property other than in the ordinary course of business. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of all liens and rights of redemption.~~

**Alternative B**

(b) With court approval ~~after notice and a hearing~~, a receiver may sell, lease, license, or otherwise transfer receivership property other than in the ordinary course of business. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained the appointment of the receiver, any subordinate lien, and any rights of redemption, but is subject to a valid senior lien ~~unless the holder of the lien authorized the transfer free and clear of the lien [in a signed record]~~.

**Alternative C**

~~(b) Unless authorized by law of this state other than this [act], a receiver may not sell, lease, license, or otherwise transfer receivership property other than in the ordinary course of business, except with the consent in a signed record of the owner and all persons holding a valid lien on the property. The consent of the owner under this section must be obtained after the appointment of the receiver.~~

**End of Alternatives**

~~(c) Subject to Section 16, on a sale under subsection (b), a lien on the property~~ A lien on receivership property which is extinguished by the sale a transfer under subsection (b) attaches to the proceeds of the sale, net of reasonable expenses incurred in the sale, transfer with the same validity, perfection, and priority as the lien had on the property immediately before the sale transfer, without regard to whether the proceeds are sufficient to satisfy all extinguished liens.

(d) A transfer under subsection (b) may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be ~~sold~~ transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the creditor's lien, if the creditor tenders cash sufficient to satisfy in full the reasonable expenses of ~~sale and all~~

1 ~~liens payable out of the proceeds of sale having priority over the lien of the creditor~~ transfer and  
2 any senior lien extinguished by the transfer.

3 (e) A reversal or modification of an order approving a transfer under ~~this section does~~  
4 ~~not affect subsection (b) neither affects~~ the validity of the transfer to a person that acquired the  
5 property in good faith nor revives against the person any lien extinguished by the transfer,  
6 whether or not the person knew ~~prior to~~ before the transfer of the ~~motion request~~ for reversal or  
7 modification, unless the court ~~stays~~ stayed the order before the transfer.

8 **~~SECTION 16. DISTRIBUTION TO SECURED CREDITOR.~~**<sup>1</sup>

9 ~~(a) Subject to subsection (b), any distribution of receivership property to a creditor with a~~  
10 ~~perfected lien on the property shall be made in accordance with the creditor's priority under law~~  
11 ~~of this state other than this [act].~~

12 ~~(b) The court may award the receiver from receivership property or proceeds the~~  
13 ~~reasonable and necessary fees and expenses of preserving, protecting, or transferring the~~  
14 ~~property.~~

15 **SECTION 17. EXECUTORY CONTRACT.**

16 (a) In this section, "timeshare interest" means an interest granting its holder the right to  
17 use and occupy an accommodation, facility, or recreational site, whether improved or not, for a  
18 specific period less than a full year during any given year, and having a duration of more than  
19 three years.

20 (b) Except as otherwise provided in subsection (h), with court approval ~~after notice and a~~  
21 ~~hearing~~, a receiver may adopt or reject an executory contract of the owner relating to  
22 receivership property. If the receiver does not request court approval to adopt or reject a contract

---

<sup>1</sup> See Section 21 below.

1 within ~~[90] days~~ a reasonable time after the receiver's appointment ~~or such longer time as the~~  
2 ~~court orders~~, the receiver is deemed to reject the contract. The court may condition the receiver's  
3 adoption and continued performance of the contract on terms appropriate under the  
4 circumstances.

5 (c) A receiver's performance of an executory contract before court approval under  
6 subsection (b) of its adoption or rejection is not an adoption of the contract and does not preclude  
7 the receiver from seeking approval to reject the contract.

8 (d) A provision in an executory contract which effects or permits a forfeiture,  
9 modification, or termination of the contract because of the appointment of a receiver or the  
10 financial condition of the owner does not affect a receiver's power under subsection (b) to adopt  
11 the contract.

12 (e) A receiver's right to possess or use receivership property pursuant to an executory  
13 contract terminates on rejection of the contract. Rejection is a breach of the contract effective  
14 immediately before the appointment of the receiver. A claim for damages for rejection of the  
15 contract must be filed by the later of:

16 (1) the time set for filing a claim in the receivership; or

17 (2) [30] days after the court approves the rejection.

18 (f) If an owner had the right to assign an executory contract relating to receivership  
19 property under the contract and law of this state other than this [act] at the time a receiver was  
20 appointed, the receiver may assign the contract with court approval ~~after notice and a hearing~~.

21 (g) If a receiver rejects an executory contract for the sale of receivership property that is  
22 real property of which the purchaser is in possession or a real property timeshare interest, the  
23 purchaser may:

(1) treat the rejection as a termination of the contract, in which case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(2) retain the purchaser's right to possession under the contract, in which case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

~~(h) A receiver may reject an unexpired lease to a tenant only if:~~

~~(1) the lease violated a provision of a mortgage or assignment of rents, or a loan document related to the mortgage or assignment, of which the tenant had actual or constructive notice at the time the lease was executed; or~~

~~(2) the lease was made or amended while the owner was in default under a mortgage or assignment of rents and the lease was not commercially reasonable when it was executed.~~

~~(i) A receiver may not reject an unexpired lease to a tenant if the tenant is not in default and the tenant:~~

~~(1) has an enforceable agreement with a mortgagee that the mortgagee will not disturb the tenant's occupancy as long as the tenant performs its obligations under the lease; or~~

~~(2) occupies the leased premises as the tenant's primary residence under a lease [for a term of one year or less] made by the tenant in good faith.~~

(h) A receiver may not reject an unexpired lease of real property to a tenant if:

(1) the tenant occupies the leased premises as the tenant's primary residence;

(2) the receiver was appointed at the request of a person other than a mortgagee;

1 or

2 (3) the receiver was appointed at the request of a mortgagee, and

3 (A) the lease is superior to the lien of the mortgage;

4 (B) the tenant has an enforceable agreement with the mortgagee, or the  
5 holder of a senior lien, that the tenant's occupancy will not be disturbed as long as the tenant  
6 performs its obligations under the lease;

7 (C) the mortgagee has consented to the lease, either in a signed record or  
8 by its failure to timely object that the lease violated a provision of the mortgage; or

9 (D) the terms of the lease were commercially reasonable at the time the  
10 lease was agreed to, and the tenant neither knew nor had reason to know that the lease violated a  
11 provision of the mortgage.

12 **SECTION 18. IMMUNITY OF RECEIVER.**

13 (a) A receiver is entitled to all defenses and immunities provided ~~at common law, in~~  
14 ~~equity, or by law of this state other than this [act]~~ for an act or omission within the scope of the  
15 receiver's appointment.

16 (b) A receiver may be sued for an act, omission, or transaction in administering  
17 receivership property only with approval, ~~after notice and a hearing,~~ of the court that appointed  
18 the receiver.

19 **SECTION 19. INTERIM REPORT OF RECEIVER.** ~~The court may order a receiver~~  
20 ~~to~~ may file at the receiver's initiative, or shall file if ordered by the court, an interim report of  
21 including:

22 (1) the activities of the receiver since appointment or a previous report;

23 (2) cash receipts and disbursements, including a payment made to or proposed to be

made to a professional engaged by the receiver;

(3) receipts and dispositions of receivership property;

(4) fees and expenses of the receiver and, if not filed separately, a motion for approval of payment of the fees and expenses; and

(5) other matters specified in ~~the order~~ an order of the court.

**SECTION 20. CLAIM AGAINST RECEIVERSHIP; DISTRIBUTION TO CREDITORS.**

(a) ~~A~~ Except as otherwise provided in subsection (e), a receiver shall give notice of appointment of the receiver to creditors of the owner by:

(1) giving notice of the appointment by first class mail or other commercially reasonable delivery method to the last known address of each creditor; and

(2) publishing notice of the appointment, at least once a week for three consecutive weeks, in a newspaper having general circulation in the [county] where the appointing court is located.

(b) Except as otherwise provided in subsection ~~(de)~~, a creditor ~~with~~ holding a claim against the owner which arose before a receiver's appointment ~~must~~ may submit the claim to the receiver on or before the date specified in the notice required by subsection (a). The date specified must be at least [90] days after the later of the mailing or last publication of the notice under subsection (a), unless ~~after notice and a hearing~~ the court reduces or extends the period. ~~The claim must set forth the name and address of the creditor and the nature and amount of the claim, be signed by the creditor under penalty of perjury, and include a copy of any record on which the claim is based. [A claim submitted in accordance with this subsection is prima facie evidence of the validity and amount of the claim.]~~ Unless the court orders otherwise, a claim that

1 is not timely submitted is not entitled to a distribution from the receivership. The claim must:

2 (1) set forth the name and address of the creditor;

3 (2) set forth the amount and the basis of the claim;

4 (3) identify any property securing the claim;

5 (4) be signed by the creditor under penalty of perjury; and

6 (5) include a copy of any record on which the claim is based.

7 (c) An assignment of a claim is effective against the receiver only if the assignee gives  
8 timely notice of the assignment to the receiver in a signed record.

9 (d) At any time before entry of an order approving a receiver's final report, the receiver  
10 may file with the court an objection to a claim of a creditor, setting forth the basis for the  
11 objection. ~~After notice and a hearing, the~~ The court shall allow or disallow the claim according  
12 to law of this state other than this [act]. ~~A claim that is allowed under subsection (b) is entitled~~  
13 ~~to share in any distribution from the receivership as the court directs according to law of this~~  
14 ~~state other than this [act]. Unless the court orders otherwise, a claim that is not timely submitted~~  
15 ~~is not entitled to a distribution from the receivership.~~

16 (e) ~~After notice and a hearing, if~~ If the court concludes that receivership property is  
17 likely to be insufficient to satisfy the claims of creditors holding ~~secured claims against~~ perfected  
18 liens on the property, the court may order that:

19 (1) the receiver need not give notice of the appointment to all creditors of the  
20 owner, but only such creditors as the court directs; or

21 (2) unsecured creditors need not submit claims under this section.

22 (f) Subject to Section 21, any distribution of receivership property to a creditor holding a  
23 perfected lien on the property shall be made in accordance with the creditor's priority under law

1 of this state other than this [act]. Any distribution of receivership property to creditors with  
2 allowed unsecured claims shall be made as the court directs according to law of this state other  
3 than this [act].

4 **SECTION 21. FEES AND EXPENSES.<sup>2</sup>**

5 (a) The court may award the receiver from receivership property or proceeds the  
6 reasonable and necessary fees and expenses of preserving, protecting, or transferring the property  
7 or proceeds.

8 (b) If the receivership does not produce sufficient funds to pay the fees and expenses of  
9 the receivership, the court may order the person who requested the receiver's appointment to pay  
10 the fees and expenses, including attorney fees.

11 **SECTION ~~21.~~ 22. REPLACEMENT OF RECEIVER; REMOVAL OF**  
12 **RECEIVER; REPLACEMENT; TERMINATION OF RECEIVERSHIP.**

13 (a) ~~The court shall replace a receiver if the receiver dies, resigns, or refuses or fails to~~  
14 ~~fulfill the receiver's duties~~ may remove a receiver for good cause, including the refusal or failure  
15 to fulfill the receiver's duties.

16 (b) The court shall replace a receiver if the receiver dies, resigns, or is removed.

17 (~~b~~c) If the court finds that a receiver replaced under subsection (~~a~~b) has accounted fully  
18 for and turned over to the successor receiver all receivership property and has filed a report of all  
19 receipts and disbursements during the replaced receiver's tenure, the court shall enter an order  
20 discharging the replaced receiver from all further duties as receiver.

21 (~~e~~d) ~~After notice and a hearing, the~~ The court may discharge a receiver and terminate the  
22 court's administration of the receivership property if the court finds that appointment of the

---

<sup>2</sup> Showing changes made from Section 16 of the October 6, 2014 draft.

receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was procured wrongfully or in bad faith, the court may:

(1) assess against the person that procured the appointment ~~all of the receiver's fees, costs of the receivership, and any appropriate sanction~~ fees and expenses of the receivership, including attorney fees; and

(2) award the owner actual damages caused by the appointment, including attorney fees.

**SECTION ~~22.~~ 23. FINAL REPORT OF RECEIVER; DISCHARGE.**

(a) On completion of a receiver's duties, the receiver shall file a final report ~~setting forth all receipts and disbursements of the receivership. The final report must include~~ including:

(1) a description of the activities of the receiver in the conduct of the receivership;

(2) a list of all receivership property at the commencement of the receivership and any receivership property ~~added~~ received thereafter;

(3) ~~a request for adoption or rejection of each executory contract that has not already been adopted or rejected;~~ a list of expenditures, including all payments to professionals retained by the receiver;

(4) a list of all ~~creditor claims and the receiver's recommendation regarding the allowance or disallowance of each claim~~ dispositions of receivership property;

(5) a list of all distributions made or proposed to be made from the receivership for creditor claims; ~~and~~

(6) if not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

1                    (7) any other information required by the court.

2                    (b) ~~After notice and a hearing, the~~ The court may approve a final report filed under  
3 subsection (a). ~~The~~ After the receiver has distributed all receivership property, the approval  
4 discharges the receiver for all matters in the report.

5                    **SECTION ~~23.~~ 24. ANCILLARY RECEIVERSHIP.**

6                    (a) The court may appoint a person appointed as a receiver in another state, or that  
7 person's nominee, as an ancillary receiver with respect to property located in this state or subject  
8 to the jurisdiction of the court, and for which a receiver could be appointed under this [act], if:

9                    (1) the person or nominee would be eligible to serve as receiver under Section 7;  
10 and

11                    (2) the appointment furthers the person's possession, custody, control, or  
12 disposition of property subject to the receivership in the other state.

13                    (b) A court may enter any order necessary to effectuate a judicial order entered in  
14 another state appointing or directing a receiver.

15                    (c) Unless the court orders otherwise, an ancillary receiver appointed under subsection  
16 (a) has the rights, powers, and duties of a receiver appointed under this [act].

17                    **SECTION ~~24.~~ 25. EFFECT OF ENFORCEMENT BY MORTGAGEE-OR**  
18 **~~ASSIGNEE OF RENTS.~~**

19                    [(a)] A ~~motion request~~ request by a mortgagee ~~or assignee of rents~~ for appointment of a receiver,  
20 appointment of a receiver by the court, or application by the mortgagee of receivership property  
21 or proceeds to the secured obligation by the mortgagee ~~or assignee~~ does not:

22                    (1) make the mortgagee ~~or assignee~~ a mortgagee in possession of the real  
23 property;

(2) make the mortgagee ~~or assignee~~ an agent of the ~~mortgagor or assignor~~; owner;

(3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable; [or]

(5) limit any right available to the mortgagee ~~or assignee~~ with respect to the secured obligation[;][; or]

[(6) constitute an action within the meaning of [cite the “one-action” statute of this state]][; or]]

[(7) except as provided in subsection (b), bar a deficiency judgment pursuant to law of this state other than this [act] governing or relating to deficiency judgments following the enforcement of a lien].

[(b) If a receiver ~~sells~~ transfers receivership property free and clear of a lien pursuant to Section 15(a), law of this state other than this [act] governing or relating to a deficiency judgment after the enforcement of a lien applies to the holder of the extinguished lien.]

***Legislative Note:** A state whose law does not prohibit or otherwise limit the ability of a lienholder to obtain a deficiency judgment following the enforcement of a lien should enact ~~Section 24~~ this section without subsection (b) and without subsection (a)(7). A state that does not have a “one action” statute should omit subsection (a)(6).*

**SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 25. 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or

1 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
2 U.S.C. Section 7003(b).

3 **~~SECTION 26. EFFECTIVE DATE.~~** This [act] takes effect on . . . .

4 **~~SECTION 27. 28. SAVINGS PROVISION.~~** This [act] ~~applies to a request for~~  
5 ~~appointment of a receiver filed on or after the effective date of this [act]~~ does not apply to a  
6 receivership for which the receiver was appointed before [the effective date of this  
7 [act]].

8 **~~SECTION 28. 29. REPEALS.~~** This [act] repeals . . . .

9 **SECTION 30. EFFECTIVE DATE.** This [act] takes effect on . . . .