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FEDERAL RECEIVERS

Federal Rules of Civil Procedure Rule 66

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

28 U.S.C.A. § 3103

§ 3103. Receivership

(a) Appointment of a receiver.--If the requirements of [section 3101](#) are satisfied, a court may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) Powers of receiver.--**(1)** The appointing court may authorize a receiver--

(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

(B) to administer, collect, improve, lease, repair or sell pursuant to [section 3007](#) such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) Duration of receivership.--A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under [section 3203\(e\)](#) or unless the court otherwise directs its continuation.

(d) Accounts; requirement to report.--A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

(e) Modification of powers; removal.--On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

(f) Priority.--If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) Compensation of receivers.--**(1)** A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

28 U.S.C.A. § 754

§ 754. Receivers of property in different districts

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof. He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in [section 959](#) of this title. Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

28 U.S.C.A. § 958

§ 958. Persons ineligible as receivers

A person holding any civil or military office or employment under the United States or employed by any justice or judge of the United States shall not at the same time be appointed a receiver in any case in any court of the United States.

28 U.S.C.A. § 959

§ 959. Trustees and receivers suable; management; State laws

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in [section 1166 of title 11](#), a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C.A. § 1692

§ 1692. Process and orders affecting property in different districts

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

28 U.S.C.A. § 2001

§ 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.

28 U.S.C.A. § 2002

§ 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.

28 U.S.C.A. § 2004

§ 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.

ALABAMA

Ala.Code 1975 § 6-6-620

§ 6-6-620. Appointment -- Power of circuit court judge, register, or clerk.

Receivers may be appointed by the circuit court judge and by the register or clerk in the absence of the judge, upon application in writing. When the application is made to the register or clerk, reasonable notice of the time of such application and the person to whom it will be submitted must be given, or a good reason shown to the register or clerk for the failure to give the same.

Ala.Code 1975 § 6-6-621

§ 6-6-621. Appointment -- Appeal when appointed by register or clerk.

When an order appointing a receiver is made by the register or clerk, it shall be subject to appeal to the circuit judge, which may be heard at any time. Such order 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.

Ala.Code 1975 § 6-6-622

§ 6-6-622. Appointment -- Posting of bond by applicant; recovery upon bond.

(a) When application is made to the circuit judge, register, or clerk for the appointment of a receiver, such circuit judge, register, or clerk must, before making such appointment, require the applicant to enter into bond, with surety, in such sum as the circuit judge, register, or clerk may prescribe, payable to the opposite party, and to be approved by the judge, register or clerk, with condition to pay all damages which any person may sustain by the appointment of the receiver if such appointment is vacated or receiver removed or discharged because improvidently appointed.

(b) Any person damaged by the appointment of the receiver in the event such appointment is vacated or discharged, as provided in subsection (a) of this section, may recover, by an action upon such bond, in his own name, all damages so sustained, not exceeding the penalty of the bond.

Ala.Code 1975 § 6-6-623

§ 6-6-623. Appointment -- Partnerships; power of court to make orders relative to partnership business, etc.; modification or vacation of appointment or orders.

(a) When any partnership shall be dissolved and the partners cannot agree upon the disposition of the partnership effects and the settlement of the affairs of such partnership, either of them may apply to the circuit court for the county in which either of said partners resides or in which the property of such partnership is situated for the appointment of a receiver to hold the business and all of the estate, both real and personal, belonging to such partnership and dispose of, manage and apply the same as the said court may direct. Upon receiving such application, said court shall forthwith appoint a day for the hearing upon the same and shall make such order relative to notice of such application and of the hearing to the other partners as may be deemed proper. The hearing shall be at least six days from the service of such order or notice, and such court, upon said hearing, may appoint a receiver for said partnership who shall be subject to the orders of said court.

(b) The said court shall have the power to make such orders relative to the management or closing up of the business of such partnership and to the sale, division, or other disposal of its real and personal estate as may be necessary to protect the rights and interests of each partner and of the creditors of such partnership.

(c) Upon the appointment of a receiver for a partnership, he shall be entitled to the immediate possession and control of all its property, both real and personal, subject to the order of said court; but any such appointment or any order of said court may be modified or vacated on the application to said court of any party to such proceedings, reasonable notice of such application and of the time and place of the hearing thereon having first been given to every other party.

Ala.Code 1975 § 6-6-624

§ 6-6-624. Appointment -- Dissolution of attachments and levies of executions against corporations or partnerships.

The commencement of proceedings for the appointment of a receiver of a corporation or a partnership shall dissolve all attachments and all levies of executions not completed made within 60 days next preceding on the property of such corporation or partnership; but if the property is subsequently taken from the receiver so that it cannot be made subject to the orders of the court in the settlement of the affairs of said corporation or partnership or if the receivership shall be terminated by order of the court pending the settlement of the affairs of the corporation or partnership, said attachments and levies of execution shall revive, and the time from the commencement of such proceedings to the time when the receiver shall be dispossessed of the property, or the finding of the court that said property is not subject to the orders of said court or when said trust shall be terminated shall be excluded from the computation in determining the continuance of the lien created by such attachment; but the attachment or levying creditors shall be allowed the amount of their legal costs accruing before the time of the appointment of a receiver as a preferred claim against the estate of said corporation or partnership if their respective claims upon which the attachments are founded shall, in whole or in part, be allowed.

Ala.Code 1975 § 6-6-625

§ 6-6-625. Payment of salaries, commissions, and wages before general liabilities of corporation or partnership paid.

Every debt due to any person on a salary or commission basis or any laborer or mechanic for personal wages from any corporation or partnership for which a receiver shall be appointed for any labor performed for such corporation or partnership within three months next preceding the service of the application for the appointment of a receiver shall be paid in full by the receiver, to the amount of not exceeding \$300, before the general liabilities of such corporation or partnership are paid.

Ala.Code 1975 § 6-6-627

§ 6-6-627. Service of process on foreign or domestic receivers.

In actions against foreign or domestic receivers holding, owning, claiming or operating property in this state, the summons and complaint may be executed by the delivery of a copy thereof to the receiver if he is found within the state or, upon affidavit being made by the plaintiff, his agent, or attorney that the receiver cannot be found within the state, then service may be had by leaving a copy of the summons and complaint with any agent in the employ of such receiver;

and, if there are two or more receivers of the same estate, firm, person, or corporation, service upon one of such receivers or his agent, as provided in this section, is sufficient.

Ala.Code 1975 § 6-6-628

§ 6-6-628. Removal and filling of vacancies.

Receivers may be removed at any time at the pleasure of the court by which they were appointed, and if any receiver is removed, declines to act or dies, the court that appointed him may fill the vacancy.

Ala.Code 1975 § 35-11-210

§ 35-11-210. Lien declared.

Every mechanic, person, firm, or corporation who shall do or perform any work, or labor upon, or furnish any material, fixture, engine, boiler, waste disposal services and equipment, or machinery for any building or improvement on land, or for repairing, altering, or beautifying the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, architect, trustee, contractor, or subcontractor, upon complying with the provisions of this division, shall have a lien therefor on such building or improvements and on the land on which the same is situated, to the extent in ownership of all the right, title, and interest therein of the owner or proprietor, and to the extent in area of the entire lot or parcel of land in a city or town; or, if not in a city or town, of one acre in addition to the land upon which the building or improvement is situated; or, if employees of the contractor or persons furnishing material to him or her, the lien shall extend only to the amount of any unpaid balance due the contractor by the owner or proprietor, and the employees and materialmen shall also have a lien on the unpaid balance. But if the person, firm, or corporation, before furnishing any material, shall notify the owner or his or her agent in writing that certain specified material will be furnished by him or her to the contractor or subcontractor for use in the building or improvements on the land of the owner or proprietor at certain specified prices, unless the owner or proprietor or his or her agent objects thereto, the furnisher of the material shall have a lien for the full price thereof as specified in the notice to the owner or proprietor without regard to whether or not the amount of the claim for the material so furnished exceeds the unpaid balance due the contractor, unless on the notice herein provided for being given, the owner or proprietor or his or her agent shall notify the furnisher in writing before the material is used, that he or she will not be responsible for the price thereof. The notice may be given in the following form, which shall be sufficient:

“To, owner or proprietor:

“Take notice, that the undersigned is about to furnish, your contractor or subcontractor, certain material for the construction, or for the repairing, altering, or beautifying of a building or buildings, or improvement or improvements, on the following described property:

and there will become due to the undersigned on account thereof the price of the material, for the payment of which the undersigned will claim a lien.”

Ala.Code 1975 § 35-11-211

§ 35-11-211. Priority of lien.

(a) Such lien as to the land and buildings or improvements thereon, shall have priority over all other liens, mortgages or incumbrances created subsequent to the commencement of work on the building or improvement. Except to the extent provided in subsection (b) below, all liens, mortgages and incumbrances (in this section, “mortgages and other liens”) created prior to the commencement of such work shall have priority over all liens for such work. Enforcement of such lien of a mechanic, materialman or other person created by [section 35-11-210](#) (in this section, “mechanic or materialman lien”) shall not affect any prior mortgage or other lien, and the purchaser in connection with the enforcement of such mechanic or materialman lien shall take the property subject to such prior mortgages and other liens of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior mortgage or other lien shall terminate and extinguish such subordinate mechanic or materialman lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of such foreclosure such lien or interest has been perfected in accordance with the provisions of this division, and the mechanic, materialman or other person thereafter shall have, to the extent of his lawful claim under this division, the statutory right of redemption afforded under applicable redemption laws to a judgment creditor whose judgment was recorded on the date such work was commenced and such rights in any excess proceeds received by the foreclosing lienholder as provided by law.

(b) As to liens, mortgages or incumbrances created prior to the commencement of the work, the lien for such work shall have priority only against the building or improvement, the product of such work which is an entirety, separable from the land, building or improvement subject of the prior lien, mortgage or incumbrance, and which can be removed therefrom without impairing the value or security of any prior lien, mortgage or incumbrance; and the person entitled to such lien may have it enforced, at any time prior to the foreclosure of such prior lien, mortgage or incumbrance, by a sale of such buildings or improvement under the provisions of this division and the purchaser may, within a reasonable time thereafter, remove the same. If such mechanic or materialman lien for such work is not enforced prior to such foreclosure, the mechanic or materialman lien shall be terminated and extinguished and after such foreclosure, the mechanic, materialman or other person who held such mechanic or materialman lien thereafter shall have the statutory right of redemption and such rights in excess proceeds to the extent provided in subsection (a) above.

(c) The provisions of this section clarify and confirm the intent of the legislature regarding existing law governing the matters contained in this section. The provisions of this section shall apply to all mortgages and other liens and to all liens of a mechanic, materialman or other person created by [section 35-11-210](#) existing on February 23, 1990 and those created or arising after February 23, 1990.

Ala.Code 1975 § 35-11-212

§ 35-11-212. Building or improvement on leased land.

(a) When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to such building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee may be bound; and if the lien is enforced by a sale of the building or improvement, the purchaser may, at his election, become entitled to the possession of the demised premises, and to

remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or he may, within 60 days after the sale, remove such building or improvement from the premises; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove such building or improvement from the premises. If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed for such payments from the proceeds of the sale.

(b) When a lien attaches under subsection (a), the lessor, at any time before a sale of the property, shall have a right to discharge the same, by paying to the holder the amount secured thereby, including costs and all moneys he may have paid to the lessor to prevent a forfeiture of the lease, and, after a sale, he shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of such building or improvement; and upon such payment, either to the holder of the lien or to the purchaser, such building or improvement shall become the property of the lessor.

Ala.Code 1975 § 35-11-213

§ 35-11-213. Verified statement -- Duty to file; contents; form.

It shall be the duty of every person entitled to such lien to file in the office of the judge of probate of the county in which the property upon which the lien is sought to be established is situated, a statement in writing, verified by the oath of the person claiming the lien, or of some other person having knowledge of the facts, containing the amount of the demand secured by the lien, after all just credits have been given, a description of the property on which the lien is claimed in such a manner that same may be located or identified, a description by house number, name of street, and name of city or town being a sufficient description where the property is located in a city or town, and the name of the owner or proprietor thereof; but no error in the amount of the demand or in the name of the owner or proprietor, shall affect the lien. Unless such statement is so filed the lien shall be lost. Said verified statement may be in the following form, which shall be deemed sufficient: State of Alabama,

County of

..... files this statement in writing, verified by the oath of, who has personal knowledge of the facts herein set forth:

That said claims a lien upon the following property, situated in county, Alabama, to wit:

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land.

Ala.Code 1975 § 35-11-214

§ 35-11-214. Verified statement -- How oath administered out of state.

If the oath to such statement is made beyond this state, it may be administered by any officer authorized to take acknowledgements and proof of conveyances beyond the state.

Ala.Code 1975 § 35-11-215

§ 35-11-215. Verified statement -- Time for filing.

The lien declared in this division shall be deemed lost unless the statement referred to in [section 35-11-213](#) shall be filed by every original contractor within six months and by every journeyman and day laborer within 30 days, and by every other person entitled to such lien within four months, after the last item of work or labor has been performed or the last item of any material, fixture, engine, boiler or machinery has been furnished for any building or improvement on land or for repairing, altering or beautifying the same under or by virtue of any contract with the owner or proprietor thereof, or his agent, architect, trustee, contractor or subcontractor.

Ala.Code 1975 § 35-11-216

§ 35-11-216. Verified statement -- Indorsement by probate judge; recordation; fee.

The judge of probate shall indorse on such statement the date of its filing, and shall record the same in a book kept for that purpose, which shall be properly labeled and indexed, and note thereon the date of filing; for all of which he shall receive \$.15 per 100 words, which shall be secured to the party filing the statement by such lien.

Ala.Code 1975 § 35-11-217

§ 35-11-217. Selection of land to be charged in certain cases.

When the land on which the building or improvement is situated is not in a city or town and exceeds in area one acre, any person having a lien, or his personal representative, may at any time prior to his filing his statement in the office of the judge of probate, select one acre in addition to the land upon which the building or improvement is situated which shall also be subject to the lien; such selection to include the land surrounding the said building or improvement, and contiguous thereto, and with the land on which the building or improvement is situated to constitute but one lot or parcel. When the land on which the building or improvement is situated is in a city or town and the improvement consists of two or more buildings united together, situated on the same lot or contiguous or adjacent lots, or of separate buildings upon contiguous or adjacent lots, or where the machinery, material, fixture, engine, boiler, work or labor has been furnished for improvements or structures which are located on separate tracts or parcels of land but operated as an entire plant or concern, and erected under one general contract, the lien for the labor, materials, fixtures, engines, boiler or machinery, so furnished, shall attach to all such construction or improvements, together with land upon which they are situated, and it shall not be necessary to file a separate lien for each lot, building or improvement, but the party claiming the lien may elect to file a separate lien for each lot, building or improvement.

Ala.Code 1975 § 35-11-218

§ 35-11-218. Notice of lien claimed by persons other than original contractor.

Every person, except the original contractor, who may wish to avail himself of the provisions of this division, shall before filing his statement in the office of the judge of probate, give notice in writing to the owner or proprietor, or his agent, that he claims a lien on such building or improvement, setting forth the amount thereof, for what, and from whom it is owing; and after such notice, any unpaid balance in the hands of the owner or proprietor shall be held subject to such lien. But the provisions of this section shall not apply to the case of any material furnished for such building or improvement, of which the owner was notified in advance as provided in [section 35-11-210](#).

ALASKA

AS § 09.40.240

§ 09.40.240. Appointment of receivers

A receiver may be appointed by the court in any action or proceeding except an action for the recovery of specific personal property

- (1) provisionally, before judgment, on the application of either party, when the party's right to the property that is the subject of the action or proceeding and that is in the possession of an adverse party 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;
- (2) after judgment, to carry the judgment into effect;
- (3) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the debtor's property in satisfaction of the judgment;
- (4) in the cases when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;
- (5) in the cases when a debtor has been declared insolvent;
- (6) under AS 32.06.504(a).

AS § 09.40.250

§ 09.40.250. Oath and undertaking of receiver

Before entering upon any duties, a receiver shall be sworn to perform them faithfully, and shall file with the clerk of court an undertaking with one or more sufficient sureties in the sum the court may direct to the effect that the receiver will faithfully discharge the duties of receiver and obey the orders of the court.

AS § 32.06.504(a)

§ 32.06.504. Partner's transferable interest subject to charging order

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require.

ARIZONA

16 A.R.S. Rules of Civil Procedure, Rule 66(a)

Rule 66(a). Application; verification; service; notice; restraining order

An application for the appointment of a receiver may be included in a verified complaint or may be made by separate and independent verified application after a complaint has been filed. No application shall be considered unless served upon the adverse party except where (A) at least ten days after filing the application, the applicant files a sworn affidavit showing that all reasonable efforts having been made, personal service on the adverse party cannot be made within the state or by direct service out of state; or (B) there is substantial cause for appointing a receiver before service can otherwise be made. If application for appointment of a receiver without notice is made, the court shall require and the applicant shall file in the court a bond in such amount as the court shall fix, with such surety as the court shall approve, conditioned to indemnify the defendant for such costs, and all damages as may be occasioned by the seizure, taking and detention of the defendant's property; or, if the defendant is available for service, the court may order a hearing on the application in less than ten days. No application for a receivership under this rule shall be entertained where Rule 65 is applicable.

16 A.R.S. Rules of Civil Procedure, Rule 66(b)

Rule 66(b). Appointment; oath; bond; certificate

1. 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.
2. Before entering upon the prescribed duties, the receiver shall file a bond to be approved by the court in the amount fixed by the order of appointment, conditioned that the receiver will faithfully discharge the duties of the receiver in the action and obey the orders of the court. The receiver shall make an oath to the same effect, which shall be endorsed on the bond. The clerk shall thereupon deliver to the receiver a certificate of appointment. The certificate shall contain a description of the property involved in the action.

16 A.R.S. Rules of Civil Procedure, Rule 66(c)

Rule 66(c). Powers; termination; governing law

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.
2. The court may at any time suspend a receiver and may, upon notice, remove a receiver and appoint another.
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.

4. In all matters relating to the appointment of receivers, to their powers, duties and liabilities, and to the power of the court, the principles of equity shall govern when applicable.

16 A.R.S. Rules of Civil Procedure, Rule 66(d)

Rule 66(d). Procedure

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by similar officers appointed by the court shall be in accordance with the practice heretofore followed. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

A.R.S. § 33-702

§ 33-702. Mortgage defined; admissibility of proof that transfer is a mortgage

B. A mortgage or trust deed may provide for an assignment to the mortgagee or beneficiary of the interest of the mortgagor or trustor in leases, rents, issues, profits or income from the property covered thereby, whether effective before, upon or after a default under such mortgage or trust deed or any contract secured thereby, and such assignment may be enforced without regard to the adequacy of the security or the solvency of the mortgagor or trustor by any one or more of the following methods:

1. The appointment of a receiver.
2. The mortgagee or beneficiary taking possession of the property, or without the mortgagee or beneficiary taking possession of the property.
3. Collecting such monies directly from the parties obligated for payment.
4. Injunction.

A.R.S. § 12-1241

§ 12-1241. Power of superior court to appoint receiver

The superior court or a judge thereof may appoint a receiver to protect and preserve property or the rights of parties therein, even if the action includes no other claim for relief.

ARKANSAS

Arkansas Rules of Civil Procedure (ARCP), Rule 66

RULE 66. RECEIVERS

(a) Appointment. Circuit courts may appoint receivers for any lawful purpose when such appointment shall be deemed necessary and proper. The receiver shall give bond, with sufficient security, in an amount to be approved by the court, for the benefit of all persons in interest. The receiver shall likewise take an oath to faithfully perform the duties reposed in him by the court.

(b) Reports. 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.

(c) Employment of Others. Subject to the approval of the court, the receiver shall have 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.

(d) Removal. Receivers may be removed at any time by the court for good cause. Substitute receivers shall be subject to the same requirements as the previous receiver.

(e) Dismissal of Action. No action wherein a receiver has been appointed shall be dismissed except by order of the court.

CALIFORNIA

West's Ann.Cal.C.C.P. § 564

§ 564. Appointment; cases in which authorized; definitions

<Section operative Jan. 1, 2014. See, also, section operative until Jan. 1, 2014.>

(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 4095, 4100, and 4185 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.

West's Ann.Cal.C.C.P. § 565

§ 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.

West's Ann.Cal.C.C.P. § 566

§ 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.

West's Ann.Cal.C.C.P. § 567

§ 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.

West's Ann.Cal.C.C.P. § 568

§ 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.

West's Ann.Cal.C.C.P. § 568.1

§ 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.

West's Ann.Cal.C.C.P. § 568.2

§ 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.

West's Ann.Cal.C.C.P. § 568.3

§ 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.

West's Ann.Cal.C.C.P. § 568.5

§ 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.

West's Ann.Cal.C.C.P. § 569

§ 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.

West's Ann.Cal.C.C.P. § 570

§ 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.

687.020. (a) As used in this section, "instrument" means a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity within any state.

(b) If an instrument is payable to the judgment debtor on demand and comes into the possession of a levying officer pursuant to this title, the levying officer shall promptly endorse and present the instrument for payment.

(c) The levying officer shall endorse the instrument by writing on the instrument (1) the name of the judgment debtor, (2) the name and official title of the levying officer, (3) the title of the court where the judgment is entered, and (4) the date of entry of the judgment and where entered in the records of the court. The endorsement is as valid as if the instrument were endorsed by the judgment debtor. No financial institution or public entity on which the instrument is drawn is liable to any person for payment of the instrument to the levying officer rather than to the judgment debtor by reason of the endorsement. No levying officer is liable by reason of endorsing, presenting, and obtaining payment of the instrument.

(d) If it appears from the face of the instrument that it has been tendered to the judgment debtor in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the judgment debtor of the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying officer, the levying officer shall hold the instrument for 30 days and is not liable to the judgment debtor or to any other person for delay in presenting it for payment. At the end of the 30-day holding period, the levying officer shall return the instrument to the maker.

701.510. Subject to Sections 687.020 and 701.520, the levying officer shall sell all property that has been levied upon except:

(a) Tangible personal property may not be sold until the levying officer obtains custody of the property.

(b) Cash may not be sold unless it has a value exceeding its face value.

701.520. (a) Except as provided in this section, any of the following property that has been levied upon shall be collected rather than sold:

(1) Accounts receivable.

(2) Chattel paper.

(3) General intangibles.

(4) Final money judgments.

(5) Instruments that are not customarily transferred in an established market.

(6) Instruments that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(b) At the time of levy on property described in subdivision (a) or thereafter, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor. Service shall be made personally or by mail. A copy of the notice of intended sale and proof of service on the judgment debtor shall be filed with the court and with the levying officer. The notice of intended sale shall describe the property and state that it will be sold at an execution sale unless, within the time allowed after service of the notice of intended sale, the judgment debtor applies to the court on noticed motion for an order that the property be collected rather than sold.

(c) Within 10 days after service of the notice of intended sale, the judgment debtor may apply to the court on noticed motion for an order that the property be collected rather than sold. A judgment debtor who so applies shall, within the time allowed for the application, serve a copy of the notice of motion on the judgment creditor and file a copy of the notice of motion with the levying officer. Service of the copy of the notice of motion on the judgment creditor shall be made personally or by mail. If the copy of the notice of motion is not filed with the levying officer within the time allowed, the levying officer shall proceed to sell the property. If a copy of the notice of motion is filed with the levying officer within the time allowed, the levying officer shall continue to collect the property until otherwise ordered by the court.

(d) At the hearing on the motion, the court may in its discretion order that the property be sold or be collected depending on the equities and circumstances of the particular case. If the court orders that the property be sold, the order may specify terms and conditions of sale. If the court orders that the property be collected, the court may condition its order on an assignment of the property by the judgment debtor to the judgment creditor pursuant to Article 6 (commencing with Section 708.510) of Chapter 6.

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor by the levying officer. Service shall be made personally or by mail.

(c) Posting under this section shall be in three public places in:

(1) The city in which the property is to be sold if it is to be sold in a city.

(2) The county in which the property is to be sold if it is not to be sold in a city.

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption under subdivision (a) of Section 703.520.

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

(b) Not less than 20 days before the date of sale, notice of sale of an interest in real property shall be served, mailed, and posted by the levying officer as provided in subdivisions (c), (d), (e), and (f).

(c) Notice of sale shall be served on the judgment debtor. Service shall be made personally or by mail.

(d) Notice of sale shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(e) At the time notice is posted pursuant to paragraph (2) of subdivision (d), notice of sale shall be served or service shall be attempted on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve such an occupant at the time service is attempted, the levying officer is not required to make any further attempts to serve an occupant.

(f) If the property described in the notice of sale consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service pursuant to subdivision (e) and posting pursuant to paragraph (2) of subdivision (d) need be made as to each continuous, unbroken tract.

(g) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior to the time of sale, in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

(h) Not earlier than 30 days after the date of levy, the judgment creditor shall determine the names of all persons having liens on the real property on the date of levy that are of record in the office of the county recorder and shall instruct the levying officer to mail notice of sale to each such person at the address used by the county recorder for the return of the instrument creating the person's lien after recording. The levying officer shall mail notice to each such person, at the address given in the instructions, not less than 20 days before the date of sale.

701.545. Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to Section 701.540 until the expiration of 120 days after the date notice of levy on the interest in real property was served on the judgment debtor.

701.547. A notice of sale shall contain the substance of the following statement: "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

701.550. (a) In addition to the notice of sale required by this article, the levying officer shall, at the time notice of sale is posted pursuant to Section 701.530 or 701.540, mail notice of sale to any person who has requested notice of the sale pursuant to this section.

(b) A request for notice of sale under this section made prior to the issuance of the writ shall be in writing and shall be filed with the clerk of the court where the judgment is entered. The request shall specify the title of the court, the cause and number of the action in which the judgment was entered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed. The name and address of the person requesting notice of sale under this subdivision shall be noted on the writ.

(c) A person who desires notice of sale of particular property that has been levied upon may file a request for notice of sale with the levying officer who will conduct the sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request.

701.555. In addition to the notice of sale required by this article, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other publication and may recover reasonable costs of such advertising. The judgment debtor may also advertise the sale at the judgment debtor's own expense.

701.560. (a) Failure to give notice of sale as required by this article does not invalidate the sale.

(b) A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give notice.

701.570. (a) A sale of property shall be held at the date, time, and place specified in the notice of sale, which shall be in the county where the property or a part thereof is situated and between the hours of nine in the morning and five in the afternoon. Subject to subdivision (d), real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties may be sold in one county as instructed by the judgment creditor.

(b) The sale shall be made at auction to the highest bidder.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request that the property be sold separately or together and may request that the property be sold in a particular order. If the judgment debtor is not present at the sale, the request may be made in writing and delivered to the levying officer prior to the sale. The levying officer shall honor the request if, in the opinion of the levying officer, the requested manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount required to satisfy the money judgment. The levying officer is not liable for a decision made in good faith under this subdivision.

(e) After sufficient property has been sold to yield the amount required to satisfy the money judgment, no more shall be sold.

701.580. The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request. Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given. A postponed sale shall be held at the place originally fixed for the sale.

701.590. (a) Except as otherwise provided in this section, the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment, except that the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other claim that is required by statute to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the highest bid for an interest in real property sold exceeds five thousand dollars (\$5,000), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(d) If the highest bid for an item, group, or lot of personal property sold exceeds two thousand five hundred dollars (\$2,500), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least two thousand five hundred dollars (\$2,500) or 10 percent of the amount bid, whichever is greater, and within 10 days after the date of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment.

(e) A person who makes the election under subdivision (c) or (d) is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, have been paid.

701.600. If the highest bidder does not pay the amount bid as prescribed by Section 701.590:

(a) The levying officer shall sell the property:

(1) If the default occurs at the sale, either to the next highest bidder at the amount of the next highest bid if such bidder agrees or to the highest bidder at a new sale held immediately.

(2) If the default occurs after the sale to a credit bidder pursuant to subdivision (c) of Section 701.590, to the highest bidder at a new sale.

(b) The levying officer shall apply the amount of any deposit made pursuant to subdivision (c) of Section 701.590 in the following order:

(1) To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale.

(2) To the satisfaction of interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(3) To the amount required to satisfy the money judgment in the order of distribution prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(c) If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

(1) The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied pursuant to subdivision (b). The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by Section 701.810 or Section 704.850, whichever is applicable.

(2) Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale.

(3) Interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold.

(4) Costs and attorney's fees incurred in the action under this subdivision.

(d) The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

701.610. The levying officer may not be a purchaser or have an interest in any purchase at a sale.

701.620. (a) Property may not be sold unless the amount bid exceeds the total of the following amounts:

(1) The amount of all preferred labor claims that are required by Section 1206 to be satisfied from the proceeds.

(2) The amount of any state tax lien (as defined in Section 7162 of the Government Code) that is superior to the judgment creditor's lien.

(3) If the purchaser is not the judgment creditor, the amount of any deposit made pursuant to Section 720.260 with interest thereon at the rate on money judgments from the date of the deposit to the date of the sale.

(b) Property for which a proceeds exemption is provided by Section 704.010 (motor vehicle), 704.020 (household furnishings and other personal effects), or 704.060 (tools of trade), may not be sold unless the amount bid exceeds the sum of any amount under subdivision (a) and the amount of the proceeds exemption.

(c) If a minimum bid required for the sale of property pursuant to this section is not received, the levying officer shall promptly release the property.

701.630. If property is sold pursuant to this article, the lien under which it is sold, any liens subordinate thereto, and any state tax lien (as defined in Section 7162 of the Government Code) on the property sold are extinguished.

701.640. The purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold (1) that is held on the effective date of the lien under which the property was sold or (2) that is acquired between such effective date and the date of sale.

701.650. (a) When the purchaser of personal property pays the amount due:

(1) If the property is capable of manual delivery, the levying officer shall deliver the property to the purchaser and, if the purchaser so requests, shall execute and deliver a certificate of sale to the purchaser.

(2) If the property is not tangible personal property or if it is otherwise not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser.

(b) If property or a certificate is delivered pursuant to subdivision (a), the levying officer shall sign or endorse any document or instrument in the levying officer's possession relating to the title to or the right to possession of the property and deliver it to the purchaser.

701.660. When the purchaser of an interest in real property pays the amount due to the levying officer, including any amount required to be paid as a documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code, the levying officer conducting the sale shall execute and deliver a deed of sale to the purchaser, record a duplicate of the deed of sale in the office of the county recorder, and forward to the county or city and county any documentary transfer tax paid by the purchaser.

701.670. The certificate of sale or deed of sale shall contain all of the following:

(a) The title of the court where the judgment was entered under which the sale was made and the cause and number of the action.

(b) The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court.

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.

(d) A description of the property sold.

(e) The date of sale.

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within 90 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. Any liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made.

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Cal.Rules of Court, Rule 3.1175

Rule 3.1175. Ex parte application for appointment of receiver

(a) Application

In addition to any other matters supporting an application for the ex parte appointment of a receiver, the applicant must show in detail by verified complaint or declaration:

(1) The nature of the emergency and the reasons irreparable injury would be suffered by the applicant during the time necessary for a hearing on notice;

(2) The names, addresses, and telephone numbers of the persons in actual possession of the property for which a receiver is requested, or of the president, manager, or principal agent of any corporation in possession of the property;

(3) The use being made of the property by the persons in possession; and

(4) If the property is a part of the plant, equipment, or stock in trade of any business, the nature and approximate size or extent of the business and facts sufficient to show whether the taking of the property by a receiver would stop or seriously interfere with the operation of the business.

If any of the matters listed above are unknown to the applicant and cannot be ascertained by the exercise of due diligence, the applicant's declaration or verified complaint must fully state the matters unknown and the efforts made to acquire the information.

Cal.Rules of Court, Rule 3.1176

Rule 3.1176. Confirmation of ex parte appointment of receiver

(a) Order to show cause

Whenever a receiver is appointed without notice, the matter must be made returnable upon an order to show cause why the appointment should not be confirmed. The order to show cause must be made returnable on the earliest date that the business of the court will admit, but not later than 15 days or, if good cause appears to the court, 22 days from the date the order is issued.

(b) Service of complaint, order to show cause, declarations, and memorandum

The applicant must serve on each of the adverse parties:

(1) A copy of the complaint if not previously served;

(2) The order to show cause stating the date, time, and place of the hearing;

(3) Any declarations supporting the application; and

(4) A memorandum supporting the application.

Service must be made as soon as reasonably practical, but no later than 5 days after the date on which the order to show cause is issued, unless the court orders another time for service.

(c) Failure to proceed or serve adverse party

When the matter first comes on for hearing, the party that obtained the appointment must be ready to proceed. If that party is not ready to proceed or has failed to exercise diligence to effect service upon the adverse parties as provided in (b), the court may discharge the receiver.

(d) Continuance

The adverse parties are entitled to one continuance to enable them to oppose the confirmation. If a continuance is granted under this subdivision, the order to show cause remains in effect until the date of the continued hearing.

Cal.Rules of Court, Rule 3.1177

Rule 3.1177. Nomination of receivers

At the hearing of an application for appointment of a receiver on notice or at the hearing for confirmation of an ex parte appointment, each party appearing may, at the time of the hearing, suggest in writing one or more persons for appointment or substitution as receiver, stating the reasons. A party's suggestion is without prejudice to its objection to the appointment or confirmation of a receiver.

Cal.Rules of Court, Rule 3.1178

Rule 3.1178. Amount of undertakings

At the hearing of an application for appointment of a receiver on notice or ex parte, the applicant must, and other parties may, propose and state the reasons for the specific amounts of the undertakings required from (1) the applicant by Code of Civil Procedure section 529, (2) the applicant by Code of Civil Procedure section 566(b), and (3) the receiver by Code of Civil Procedure section 567(b), for any injunction that is ordered in or with the order appointing a receiver.

Cal.Rules of Court, Rule 3.1179

Rule 3.1179. The receiver

(a) Agent of the court

The receiver is the agent of the court and not of any party, and as such:

- (1) Is neutral;
- (2) Acts for the benefit of all who may have an interest in the receivership property; and
- (3) Holds assets for the court and not for the plaintiff or the defendant.

(b) Prohibited contracts, agreements, arrangements, and understandings

The party seeking the appointment of the receiver may not, directly or indirectly, require any contract, agreement, arrangement, or understanding with any receiver whom it intends to nominate or recommend to the court, and the receiver may not enter into any such contract, arrangement, agreement, or understanding concerning:

- (1) The role of the receiver with respect to the property following a trustee's sale or termination of a receivership, without specific court permission;
- (2) How the receiver will administer the receivership or how much the receiver will charge for services or pay for services to appropriate or approved third parties hired to provide services;
- (3) Who the receiver will hire, or seek approval to hire, to perform necessary services; or

(4) What capital expenditures will be made on the property.

Cal.Rules of Court, Rule 3.1180

Rule 3.1180. Employment of attorney

A receiver must not employ an attorney without the approval of the court. The application for approval to employ an attorney must be in writing and must state:

- (1) The necessity for the employment;
- (2) The name of the attorney whom the receiver proposes to employ; and
- (3) That the attorney is not the attorney for, associated with, nor employed by an attorney for any party.

Cal.Rules of Court, Rule 3.1181

Rule 3.1181. Receiver's inventory

(a) Filing of inventory

A receiver must, within 30 days after appointment, or within such other time as the court may order, file an inventory containing a complete and detailed list of all property of which the receiver has taken possession by virtue of the appointment.

(b) Supplemental inventory

The receiver must promptly file a supplementary inventory of all subsequently obtained property.

Cal.Rules of Court, Rule 3.1182

Rule 3.1182. Monthly reports

(a) Content of reports

The receiver must provide monthly reports to the parties and, if requested, to nonparty client lien holders. 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:
 - (A) Itemized services;
 - (B) A breakdown of the services by 1/10 hour increments;
 - (C) If the fees are hourly, the hourly fees; and
 - (D) If the fees are on another basis, that basis.

(b) Reports not to be filed

The monthly reports are not to be filed with the court unless the court so orders.

Cal.Rules of Court, Rule 3.1183

Rule 3.1183. Interim fees and objections

(a) Interim fees

Interim fees are subject to final review and approval by the court. The court retains jurisdiction to award a greater or lesser amount as the full, fair, and final value of the services received.

(b) Objections to interim accounts and reports

Unless good cause is shown, objections to a receiver's interim report and accounting must be made within 10 days of notice of the report and accounting, must be specific, and must be delivered to the receiver and all parties entitled to service of the interim report and accounting.

Cal.Rules of Court, Rule 3.1184

Rule 3.1184. Receiver's final account and report

(a) Motion or stipulation

A receiver must present by noticed motion or stipulation of all parties:

- (1) A final account and report;
- (2) A request for the discharge; and
- (3) A request for exoneration of the receiver's surety.

(b) No memorandum required

No memorandum needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders.

(c) Notice

Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it.

(d) Claim for compensation for receiver or attorney

If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in an account, it must state in detail what services have been performed by the receiver or the attorney and whether previous allowances have been made to the receiver or attorney and the amounts.

Cal.Rules of Court, Rule 3.1200

Rule 3.1200. Application

The rules in this chapter govern ex parte applications and orders in civil cases, unless otherwise provided by a statute or a rule. These rules may be referred to as “the ex parte rules.”

Cal.Rules of Court, Rule 3.1201

Rule 3.1201. Required documents

A request for ex parte relief must be in writing and must include all of the following:

- (1) An application containing the case caption and stating the relief requested;
- (2) A declaration in support of the application making the factual showing required under rule 3.1202(c);
- (3) A declaration based on personal knowledge of the notice given under rule 3.1204;
- (4) A memorandum; and
- (5) A proposed order.

Cal.Rules of Court, Rule 3.1202

Rule 3.1202. Contents of application

(a) Identification of attorney or party

An ex parte application must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party if known to the applicant.

(b) Disclosure of previous applications

If an ex parte application has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, must include a full disclosure of all previous applications and of the court's actions.

(c) Affirmative factual showing required

An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.

Cal.Rules of Court, Rule 3.1203

Rule 3.1203. Time of notice to other parties

(a) Time of notice

A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

(b) Time of notice in unlawful detainer proceedings

A party seeking an ex parte order in an unlawful detainer proceeding may provide shorter notice than required under (a) provided that the notice given is reasonable.

Cal.Rules of Court, Rule 3.1204

Rule 3.1204. Contents of notice and declaration regarding notice

(a) Contents of notice

When notice of an ex parte application is given, the person giving notice must:

- (1) State with specificity the nature of the relief to be requested and the date, time, and place for the presentation of the application; and
- (2) Attempt to determine whether the opposing party will appear to oppose the application.

(b) Declaration regarding notice

An ex parte application must be accompanied by a declaration regarding notice stating:

- (1) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 3.1203, the applicant informed the opposing party where and when the application would be made;
- (2) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
- (3) That, for reasons specified, the applicant should not be required to inform the opposing party.

(c) Explanation for shorter notice

If notice was provided later than 10:00 a.m. the court day before the ex parte appearance, the declaration regarding notice must explain:

- (1) The exceptional circumstances that justify the shorter notice; or
- (2) In unlawful detainer proceedings, why the notice given is reasonable.

Cal.Rules of Court, Rule 3.1205

Rule 3.1205. Filing and presentation of the ex parte application

Notwithstanding the failure of an applicant to comply with the requirements of rule 3.1203, the clerk must not reject an ex parte application for filing and must promptly present the application to the appropriate judicial officer for consideration.

Cal.Rules of Court, Rule 3.1206

Rule 3.1206. Service of papers

Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing may be conducted unless such service has been made.

Cal.Rules of Court, Rule 3.1207

Rule 3.1207. Personal appearance requirements

An ex parte application will be considered without a personal appearance of the applicant in the following cases only:

- (1) Applications to file a memorandum in excess of the applicable page limit;
- (2) Applications for extensions of time to serve pleadings;
- (3) Setting of hearing dates on alternative writs and orders to show cause; and
- (4) Stipulations by the parties for an order.

Cal.Rules of Court, Rule 3.1300

Rule 3.1300. Time for filing and service of motion papers

(a) In general

Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005.

(b) Order shortening time

The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005.

(c) Time for filing proof of service

Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing.

(d) Filing of late papers

No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.

(e) Computation of time

A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed.

Cal.Rules of Court, Rule 3.1302

Rule 3.1302. Place and manner of filing

(a) Papers filed in clerk's office

Unless otherwise provided by local rule, all papers relating to a law and motion proceeding must be filed in the clerk's office.

(b) Requirements for lodged material

Material lodged with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. After determination of the matter, the clerk may mail the material to the party lodging it.

Cal.Rules of Court, Rule 3.1304

Rule 3.1304. Time of hearing

(a) General schedule

The clerk must post a general schedule showing the days and departments for holding each type of law and motion hearing.

(b) Duty to notify if matter not to be heard

The moving party must immediately notify the court if a matter will not be heard on the scheduled date.

(c) Notice of nonappearance

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless the court orders otherwise. The court must rule on the motion as if the party had appeared.

(d) Action if no party appears

If a party fails to appear at a law and motion hearing without having given notice under (c), the court may take the matter off calendar, to be reset only upon motion, or may rule on the matter.

Cal.Rules of Court, Rule 3.1308

Rule 3.1308. Tentative rulings

(a) Tentative ruling procedures

A trial court that offers a tentative ruling procedure in civil law and motion matters must follow one of the following procedures:

(1) Notice of intent to appear required

The court must make its tentative ruling available by telephone and also, at the option of the court, by any other method designated by the court, by no later than 3:00 p.m. the court day before the scheduled hearing. If the court desires oral argument, the tentative ruling must so direct. The tentative ruling may also note any issues on which the court wishes the parties to provide further argument. If the court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the court by 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. The court must accept notice by telephone and, at its discretion, may also designate alternative methods by which a party may notify the court of the party's intention to appear. The tentative ruling will become the ruling of the court if the court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

(2) No notice of intent to appear required

The court must make its tentative ruling available by telephone and also, at the option of the court, by any other method designated by the court, by a specified time before the hearing. The tentative ruling may note any issues on which the court wishes the parties to provide further argument at the hearing. This procedure must not require the parties to give notice of intent to appear, and the tentative ruling will not automatically become the ruling of the court if such notice is not given. The tentative ruling, or such other ruling as the court may render, will not become the final ruling of the court until the hearing.

(b) No other procedures permitted

Other than following one of the tentative ruling procedures authorized in (a), courts must not issue tentative rulings except:

(1) By posting a calendar note containing tentative rulings on the day of the hearing; or

(2) By announcing the tentative ruling at the time of oral argument.

(c) Notice of procedure

A court that follows one of the procedures described in (a) must so state in its local rules. The local rule must specify the telephone number for obtaining the tentative rulings and the time by which the rulings will be available.

(d) Uniform procedure within court or branch

If a court or a branch of a court adopts a tentative ruling procedure, that procedure must be used by all judges in the court or branch who issue tentative rulings.

(e) Tentative rulings not required

This rule does not require any judge to issue tentative rulings.

Cal.Rules of Court, Rule 3.1310

Rule 3.1310. Reporting of proceedings on motions

A court that does not regularly provide for reporting or electronic recording of hearings on motions must so state in its local rules. The rules must also provide a procedure by which a party may obtain a reporter or a recording of the proceedings in order to provide an official verbatim transcript.

Cal.Rules of Court, Rule 3.1312

Rule 3.1312. Preparation and submission of proposed order

(a) Prevailing party to prepare

Unless the parties waive notice or the court orders otherwise, the party prevailing on any motion must, within five days of the ruling, serve by any means authorized by law and reasonably calculated to ensure delivery to the other party or parties no later than the close of the next business day a proposed order for approval as conforming to the court's order. Within five days after service, the other party or parties must notify the prevailing party as to whether or not the proposed order is so approved. The opposing party or parties must state any reasons for disapproval. Failure to notify the prevailing party within the time required shall be deemed an approval. The extensions of time based on a method of service provided under any statute or rule do not apply to this rule.

(b) Submission of proposed order to court

The prevailing party must, upon expiration of the five-day period provided for approval, promptly transmit the proposed order to the court together with a summary of any responses of the other parties or a statement that no responses were received.

(c) Submission of proposed order by electronic means

If a proposed order is submitted to the court electronically in a case in which the parties are electronically filing documents under rules 2.250-2. 261 two versions of the proposed order must be submitted:

(1) A version of the proposed order must be attached to a completed *Proposed Order (Cover Sheet)* (form EFS-020), and the combined document in Portable Document Format (PDF) must be filed electronically; and

(2) A version of the proposed order in an editable word-processing format must also be sent electronically to the court, with a copy of the e-mail and proposed order also being sent to all parties in the action.

Each court that provides for electronic filing must provide an electronic address or addresses to which the editable versions of proposed orders are to be sent and must specify any particular requirements regarding the editable word-processing format for proposed orders.

(d) Failure of prevailing party to prepare proposed order

If the prevailing party fails to prepare and submit a proposed order as required by (a) and (b) above, any other party may do so.

(e) Motion unopposed

This rule does not apply if the motion was unopposed and a proposed order was submitted with the moving papers, unless otherwise ordered by the court.

West's Ann.Cal.Civ.Code § 2924(c)

(c) A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

West's Ann.Cal.Civ.Code § 2856

§ 2856. Waiver of suretyship rights and defenses; contract language; effectiveness; applicability; validity of waivers executed prior to January 1, 1997

(a) Any guarantor or other surety, including a guarantor of a note or other obligation secured by real property or an estate for years, may waive any or all of the following:

(1) The guarantor or other surety's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor or other surety by reason of Sections 2787 to 2855, inclusive.

(2) Any rights or defenses the guarantor or other surety may have in respect of his or her obligations as a guarantor or other surety by reason of any election of remedies by the creditor.

(3) Any rights or defenses the guarantor or other surety may have because the principal's note or other obligation is secured by real property or an estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure to the principal's note or other obligation.

(b) A contractual provision that expresses an intent to waive any or all of the rights and defenses described in subdivision (a) shall be effective to waive these rights and defenses without regard to the inclusion of any particular language or phrases in the contract to waive any rights and defenses or any references to statutory provisions or judicial decisions.

(c) Without limiting any rights of the creditor or any guarantor or other surety to use any other language to express an intent to waive any or all of the rights and defenses described in paragraphs (2) and (3) of subdivision (a), the following provisions in a contract shall effectively waive all rights and defenses described in paragraphs (2) and (3) of subdivision (a):

The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:

(1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

(2) If the creditor forecloses on any real property collateral pledged by the debtor:

(A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

(d) Without limiting any rights of the creditor or any guarantor or other surety to use any other language to express an intent to waive all rights and defenses of the surety by reason of any election of remedies by the creditor, the following provision shall be effective to waive all rights and defenses the guarantor or other surety may have in respect of his or her obligations as a surety by reason of an election of remedies by the creditor:

The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(e) Subdivisions (b), (c), and (d) shall not apply to a guaranty or other type of suretyship obligation made in respect of a loan secured by a deed of trust or mortgage on a dwelling for not more than four families when the dwelling is occupied, entirely or in part, by the borrower and that loan was in fact used to pay all or part of the purchase price of that dwelling.

(f) The validity of a waiver executed before January 1, 1997, shall be determined by the application of the law that existed on the date that the waiver was executed.

COLORADO

C.R.C.P. Rule 66

RULE 66. RECEIVERS

(a) When Appointed. A receiver may be appointed by the court in which the action is pending at any time:

(1) Before judgment, provisionally, on 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; or

(2) By or after judgment, to dispose of the property according to the judgment, or to preserve it during appellate proceedings; or

(3) In other cases where proper and in accordance with the established principles of equity.

(b) Oath and Bond; Suit on Bond. Before entering upon his duties, the receiver shall be sworn to perform them faithfully, and shall execute, with one or more sureties, an undertaking with the people of the state of Colorado, in such sum as the court shall direct, to the effect that he will faithfully discharge his duties and will pay over and account for all money and property which may come into his hands as the court may direct, and will obey the orders of the court therein. The undertaking, with the sureties, must be approved by the court, or by the clerk thereof when so ordered by the court, and may be sued upon in the name of the people of the state of Colorado, at the instance and for the use of any party injured.

(c) Dismissal of Receivership Action. An action in which a receiver has been appointed shall not be dismissed except by order of the court.

(d) Sole Claim for Relief; Service of Process; Notice.

(1) The appointment of a receiver may be the sole claim for relief in an action. The action shall be commenced by filing a complaint, or by service of a summons and a complaint, as provided in [C.R.C.P. 3\(a\)](#).

(2) If the receivership is requested in connection with a mortgage, trust deed or other lien on real property, the current owner of the property, as shown by the records of the clerk and recorder, and any other person then collecting the rents and profits as a result of that person's lien on the rents or profits, shall be named as defendants.

(3) If a receiver is appointed by the court ex parte, copies of the summons, complaint, and order appointing the receiver shall be served on the defendants without delay, as provided in [C.R.C.P. 4](#) or as directed by the court. The court, in its order for appointment of the receiver, shall direct the receiver to provide written notice of the action to any persons in possession of the property or otherwise affected by the order.

C.R.S.A. § 38-38-601

§ 38-38-601. Receiver appointed upon application

(1) When an action or proceeding has been commenced to foreclose a mortgage, trust deed, or other instrument securing an indebtedness, a receiver of the property affected shall be appointed upon application at any time prior to the sale, if it appears that the security is clearly inadequate or that the premises are in danger of being materially injured or reduced in value as security by removal, destruction, deterioration, accumulation of prior liens, or otherwise so as to render the security inadequate.

(2) If the facts would justify the appointment of a receiver under this section but one is not applied for and if the premises are abandoned by the owner thereof, the holder of the lien may take possession until the sale and shall be subject to the same duties and liabilities for the care of the premises and for the application of the rents and profits as would a receiver.

C.R.S.A. § 38-38-602

§ 38-38-602. Appointment of receiver to prevent waste

(1) During the period of redemption, the owner of the premises or the person in possession shall not commit waste, and the purchaser shall have such action or remedy for waste, including injunction, as he would have as owner of the premises. During such period, the owner of the premises shall keep the premises in repair, shall use reasonable diligence to continue to keep the premises yielding an adequate income, and shall pay current taxes before a penalty accrues and interest becomes due on any prior encumbrance, keep the premises insured for the protection of the holder of the certificate of purchase, and, in case of a leasehold, pay the rent and other sums due under the lease, and failure to do so shall constitute waste. In case of waste committed or danger of waste or an actual probability of the security being rendered inadequate, a receiver may be appointed to take possession and preserve the property at any time after the sale under such foreclosure. A receiver appointed before the sale shall continue after sale unless otherwise directed by the court.

(2) If the facts would justify the appointment of a receiver under this section but one is not applied for and if the premises are abandoned by the owner thereof, the purchaser may take possession and shall be subject to the same duties and liabilities for the care of the premises and for the application of the rents and profits as would a receiver.

(3) Nothing in this article shall restrict the power of the court in the appointment of a receiver pursuant to existing law or pursuant to agreement between the parties.

C.R.S.A. § 38-38-301

§ 38-38-301. Holder of certificate of purchase paying charges--redemption

The holder of a certificate of purchase may pay at any time after the sale and during the redemption period described in section 38-38-302 the fees and costs that the holder may pay pursuant to section 38-38-107 and may include any such amounts as part of the amount to be paid upon redemption.

C.R.S.A. § 38-38-302

§ 38-38-302. Redemption by lienor--procedure

(1) Requirements for redemption. A lienor or assignee of a lien is entitled to redeem if the following requirements are met to the satisfaction of the officer:

(a) The lienor's lien is a deed of trust or other lien that is created or recognized by state or federal statute or by judgment of a court of competent jurisdiction;

(b) The lien is a junior lien as defined in [section 38-38-100.3\(11\)](#);

(c) The lienor's lien appears by instruments that were duly recorded in the office of the clerk and recorder of the county prior to the recording of the notice of election and demand or lis pendens and the lienor is one of the persons who would be entitled to cure pursuant to [section 38-38-104\(1\)](#), regardless of whether such lienor filed a notice of intent to cure. If, prior to the date and time of the recording of the notice of election and demand or lis pendens, a lien was recorded in

an incorrect county, the holder's rights under this section shall be valid only if the lien is rerecorded in the correct county at least fifteen calendar days prior to the actual date of sale.

(d) The lienor has, within eight business days after the sale, filed a notice with the officer of the lienor's intent to redeem. A lienor may file a notice of intent to redeem more than eight business days after sale if:

(I) No lienor junior to the lienor seeking to file the late intent to redeem has redeemed;
(II) The redemption period for the lienor seeking to file the late intent to redeem has not expired;
(III) A redemption period has been created by the timely filing of a notice of intent to redeem;
and

(IV) The notice of intent to redeem is accompanied by a written authorization from the attorney for the holder of the certificate of purchase according to the records of the officer conducting the sale, or, if no attorney is shown, then the holder of the certificate of purchase, or, if a redemption has occurred, from the immediately prior redeeming lienor, or the attorney for the immediately prior redeeming lienor, authorizing the officer to accept such notice of intent to redeem.

(e) The lienor has attached to the notice of intent to redeem the original instrument and any assignment of the lien to the person attempting to redeem, or certified copies thereof, or in the case of a qualified holder, a copy of the instrument evidencing the lien and any assignment of the lien to the person attempting to redeem. If the original instrument is delivered to the officer, the officer shall return the instrument to the lienor and retain a copy.

(f) The lienor has attached to the notice of intent to redeem a signed and properly acknowledged statement of the lienor, or a signed statement by the lienor's attorney, setting forth the amount required to redeem the lienor's lien, including per diem interest, through the end of the nineteenth business day after the sale with the same specificity and itemization as required in [section 38-38-106](#). If the amount required to redeem the lienor's lien shown on the statement is zero, the lienor has no right to redeem unless [section 38-38-305](#) applies.

(2) Request for redemption amount. Upon receipt by the officer of the notice of intent to redeem filed by a person entitled to redeem under this section, the officer shall within one business day transmit by mail, facsimile, or other electronic means to the attorney for the holder of the certificate of purchase, or if no attorney, then to the holder, a written request for a written or electronic statement of all sums necessary to redeem the sale. The statement shall include the amounts required to redeem in accordance with this section.

(3) Statement of redemption. (a) Upon receipt of notice that an intent to redeem was filed, the holder of a certificate of purchase shall submit a signed and acknowledged statement, or the attorney for the holder shall submit a signed statement, to the officer, no later than thirteen business days following the sale, specifying all sums necessary to redeem as of the date of the statement, the amount of per diem interest accruing thereafter, and the interest rate on which the amount is based. A holder of the certificate of purchase that is not a qualified holder, or the attorney for the holder, shall also submit to the officer receipts, invoices, evidence of electronic account-to-account transfers, or copies of loan servicing computer screens evidencing the fees and costs and verifying that the fees and costs were actually incurred as of the date of the statement, along with the per diem amounts that accrue after the date of sale. The holder or the attorney for the holder may amend the statement from time to time to reflect additional sums advanced as allowed by law, but the statement shall not be amended later than two business days prior to the commencement of the redemption period pursuant to paragraph (a) of subsection (4) of this section or each subsequent redemption period pursuant to paragraph (b) of subsection (4) of this section.

(b) If the holder of the certificate of purchase or the attorney for the holder fails to submit the initial written statement to the officer within thirteen business days after the sale, the officer may calculate the amount necessary to redeem by adding to the successful bid the accrued interest from the sale through the redemption date. The accrued interest shall be calculated by multiplying the amount of the bid by the regular rate of annual interest specified in the evidence of debt, deed of trust, or other lien being foreclosed, divided by three hundred sixty-five and then multiplied by the number of days from the date of sale through the redemption date. The officer shall transmit by mail, facsimile, or other electronic means to the party filing the notice of intent to redeem, promptly upon receipt, the statement filed by the holder, or if no such statement is filed, the officer's estimate of the redemption figure, which shall be transmitted no later than the commencement of the redemption period pursuant to paragraph (a) of subsection (4) of this section or each subsequent redemption period pursuant to paragraph (b) of subsection (4) of this section.

(4) Redemption period. (a) No sooner than fifteen business days nor later than nineteen business days after a sale under this article, the junior lienor having the most senior recorded lien on the sold property or any portion thereof, according to the records, having first complied with the requirements of subsection (1) of this section, may redeem the property sold by paying to the officer, no later than 12 noon on the last day of the lienor's redemption period, in the form specified in [section 38-37-108](#), the amount for which the property was sold with interest from the date of sale, together with all sums allowed under [section 38-38-301](#). Interest on the amount for which the property was sold shall be charged at the default rate specified in the evidence of debt, deed of trust, or other lien being foreclosed or, if not so specified, at the regular rate specified in the evidence of debt, deed of trust, or other lien being foreclosed. If different interest rates are specified in the evidence of debt, deed of trust, or other lien being foreclosed, the interest rate specified in the evidence of debt shall prevail. If the evidence of debt does not specify an interest rate, including a default interest rate, applicable interest rate as specified in the deed of trust or other lien being foreclosed shall apply.

(b)(I) Each subsequent lienor entitled to redeem shall, in succession, have an additional period of five business days to redeem. The right to redeem shall be in priority of such liens according to the records. The redeeming lienor shall redeem by paying to the officer, on or before 12 noon of the last day of the lienor's redemption period:

(A) The redemption amount paid by the prior redeeming lienor, with interest at the rate specified in paragraph (a) of this subsection (4), plus the amount claimed in the statement delivered by the immediately prior redeeming lienor pursuant to subsection (6) of this section, including the per diem amounts through the date on which the payment is made; or

(B) If no prior lienor has redeemed, the redemption amount determined pursuant to paragraph (a) of this subsection (4).

(II) If the redeeming lienor is the same person as the holder of the certificate of purchase or the prior redeeming lienor as evidenced by the instruments referred to in subsection (1) of this section, regardless of the number of consecutive liens held by the redeeming lienor, the redeeming lienor shall not pay to the officer the redemption amount indicated in the certificate of purchase or certificate of redemption held by such person, but shall only pay to the officer the unpaid fees and costs required by the redemption and provide the statement described in paragraph (f) of subsection (1) of this section.

(c) If the statement described in paragraph (f) of subsection (1) of this section so states, or upon other written authorization from the holder of the certificate of purchase or the then-current

holder of the certificate of redemption or the attorney for either such holder, the officer may accept as a full redemption an amount less than the amount specified in paragraph (a) of subsection (3) of this section. Notwithstanding the first sentence of this paragraph (c), the amount bid at sale shall determine the amount and extent of any deficiency remaining on the debt represented by the evidence of debt that is the subject of the foreclosure as stated in the bid pursuant to [section 38-38-106\(2\)](#). Any redemption under this section shall constitute a full redemption and shall be deemed to be payment of all sums to which the holder of the certificate of purchase is entitled.

(d) On the ninth business day after the date of sale, the officer shall set the dates of the redemption period of each lienor in accordance with this subsection (4). The redemption period of a lienor shall not be shortened or altered by the fact that a prior lienor redeemed before the expiration of his or her redemption period.

(5) Certificate of redemption. Upon receipt of the redemption payment pursuant to subsection (4) of this section, the officer shall execute and record a certificate of redemption pursuant to [section 38-38-402](#). Upon the expiration of each redemption period under this section, the officer shall disburse all redemption proceeds to the persons entitled to receive them.

(6) Certificate of lienor. A redeeming lienor shall pay to the officer the amount required to redeem and shall deliver to the officer a signed and properly acknowledged statement by the lienor or a signed statement by the lienor's attorney showing the amount owing on such lien, including per diem interest and fees and costs actually incurred that are permitted by subsection (7) of this section and for which the lienor has submitted to the officer receipts, invoices, evidence of electronic account-to-account transfers, or copies of loan servicing computer screens evidencing the fees and costs and verifying that the fees and costs were actually incurred as of the date of the statement of redemption with the per diem amounts that accrue thereafter. At any time before the expiration of a redeeming lienor's redemption period, the redeeming lienor may submit a revised or corrected certificate, or the attorney for the lienor may submit a revised or corrected statement.

(7) Payment of fees and costs. A redeeming lienor may, during such lienor's redemption period described in subsection (4) of this section, pay the fees and costs that the holder of the evidence of debt may pay pursuant to [section 38-38-107](#).

(8) Misstatement of redemption amount. If an aggrieved person contests the amount set forth in the statement filed by a redeeming lienor pursuant to paragraph (f) of subsection (1) of this section or by a holder of a certificate of purchase pursuant to paragraph (a) of subsection (3) of this section and a court determines that the redeeming lienor or holder of the certificate of purchase has made a material misstatement on the statement with respect to the amount due and owing to the redeeming lienor or the holder of the certificate of purchase, the court shall, in addition to other relief, award to the aggrieved person the aggrieved person's court costs and reasonable attorney fees and costs.

(9) No partial redemption. A lienor holding a lien on less than all of, or a partial interest in, the property sold at sale shall redeem the entire property. No partial redemption shall be permitted under this part 3. The priority of liens for purposes of this section shall be determined without consideration of the fact that the lien relates to only a portion of the property or to a partial interest therein.

(10) Federal redemption rights. Any redemption rights granted under federal law are separate and distinct from the redemption rights granted under this part 3. All liens that are junior to the deed of trust or other lien being foreclosed pursuant to this article shall be divested by the sale under

this article, subject to the redemption rights provided in this part 3. The officer conducting a foreclosure under this article is not designated to receive redemptions under federal law.

C.R.S.A. § 38-38-304

§ 38-38-304. Effect of redemption

(3) If redemption is made by a lienor, the certificate of redemption, duly recorded, operates as an assignment to the lienor of the estate and interest acquired by the purchaser at the sale, subject to the rights of omitted parties as defined in [section 38-38-506\(1\)](#) and persons who may be entitled subsequently to redeem.

C.R.S.A. § 38-38-305

§ 38-38-305. Lessee, easement holder, and installment land contract vendor considered as lienors--installment land contract vendee considered as an owner

(1) For the purposes of this article, a lessee of, or the holder of an easement encumbering, property shall be considered as a lienor, but without any lien amount, and shall be subject to all requirements in this article with respect to lienors. If a subsequent lienor redeems from the redemption of a lessee or easement holder, such subsequent lienor in acquiring said property takes the same subject to such lease or easement.

(1.5)(a) The notice to the lessee or lessees who have unrecorded possessory interests in the property being foreclosed as provided for by this article and article 37 of this title by virtue of any foreclosure of a mortgage, trust deed, or other lien or by virtue of an execution and levy shall be mailed to the lessee or lessees of a single-family residence or a multiple-unit residential dwelling. Such notice shall be in writing and shall be sent by regular mail. Notice is complete upon mailing to the lessee at the address of the premises or by addressing such notice to "Occupant" followed by the address.

(b) Nothing in this section shall affect any rights under this article of a lessee whose residential lease is recorded.

(2) For the purposes of this article, an installment land contract vendor of property shall be considered as a lienor for the unpaid portion of the purchase price, interest, and other amounts provided under the installment land contract and shall be subject to all requirements in this article with respect to lienors; but such installment land contract vendor shall not be considered as an owner as to any portion of such property.

(3) For the purposes of this article, an installment land contract vendee of property shall be considered as an owner except as to any portion of such property that such vendee may thereafter have transferred, as evidenced by a recorded instrument, and such vendee shall be subject to all requirements in this article with respect to owners.

C.R.S.A. § 38-38-306

§ 38-38-306. Rights of other lienors to redeem

(1) A judgment creditor whose judgment has been made a lien of record and who has complied with the other conditions of a lienor required by this article may redeem as a lienor.

(2) A mechanic's lien claimant or any other person claiming the right to a statutory lien on real property shall have the right to redeem as a lienor despite the fact that the claim has not been reduced to judgment, if the lien or lien claim has been recorded as required or permitted by statute and the holder thereof has complied with the other conditions required of a lienor by this article. If another lienor redeems after such lien claimant, that portion of the redemption amount

attributable to the claim of such lien claimant, as evidenced by such claimant's recorded lien, shall be held in escrow by the officer until a final judgment has been entered in favor of such claimant confirming the claimant's right to a lien and all periods for appeal have expired, whereupon there shall be paid to such claimant from the escrow the amount of the lien claim as established by the judgment, with any interest earned thereon, and the balance, if any, shall be refunded to the owner of the property as of the date of the sale, so long as the last redeeming lienor has otherwise been satisfied. If the claimant releases the lien or fails to establish a right to the lien, the entire escrow shall be paid to the owner of the property as of the date of the sale, so long as the last redeeming lienor has otherwise been satisfied. Lien claimants of equal priority, for the purposes of this subsection (2), may act in concert and be deemed to represent one claim in which they share pro rata. The right of the owner of the property as of the date of the sale to excess sale proceeds pursuant to a homestead exemption under section 38-41-201 is subordinate to the right of a subsequent deed of trust beneficiary for whose benefit the owner waived the homestead exemption.

C.R.S.A. § 7-56-716

§ 7-56-716. Receivership or custodianship

(1) A court in a proceeding to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage the business and affairs, of the cooperative. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian pursuant to this section. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity or other entity authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver may:

(I) Dispose of all or any part of the property of the cooperative, wherever located, at a public or private sale, if authorized by the court; and

(II) Sue and defend in the receiver's own name as receiver of the cooperative in all courts; or

(b) The custodian may exercise all of the powers of the cooperative, through or in place of its board or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its members and creditors.

(4) The court, during a receivership, may redesignate the receiver as custodian, and during a custodianship may redesignate the custodian as receiver if doing so is in the best interests of the cooperative and its members and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the cooperative or proceeds from the sale of the assets.

C.R.S.A. § 7-80-812

§ 7-80-812. Receivership or custodianship

(1) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the limited liability company and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

(I) May dispose of all or any part of the property of the limited liability company wherever located, at a public or private sale, if authorized by the court; and

(II) May sue and defend in the receiver's own name as receiver of the limited liability company in all courts; or

(b) The custodian, with the authority of a manager of a limited liability company, the articles of organization of which provide that it is to be managed by managers, may exercise all of the powers of the limited liability company, through or in place of its managers or members, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the limited liability company and its members and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the limited liability company or proceeds from the sale of the assets.

C.R.S.A. § 7-114-303

§ 7-114-303. Receivership or custodianship

(1) A court in a judicial proceeding to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

- (I) May dispose of all or any part of the property of the corporation wherever located, at a public or private sale, if authorized by the court; and
- (II) May sue and defend in the receiver's own name as receiver of the corporation in all courts; or
- (b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
- (4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation and its shareholders and creditors.
- (5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the corporation or proceeds from the sale of the assets.

C.R.S.A. § 7-134-303

§ 7-134-303. Receivership or custodianship

- (1) A court in a judicial proceeding to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the nonprofit corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.
- (2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state, or a domestic or foreign nonprofit corporation authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount stated by the court.
- (3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers the receiver shall have the power to:
 - (a) Dispose of all or any part of the property of the nonprofit corporation, wherever located, at a public or private sale, if authorized by the court; and
 - (b) Sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.
- (4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.
- (5) The court, during a receivership, may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the nonprofit corporation and its members and creditors.
- (6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

CONNECTICUT

C.G.S.A. § 47a-21

§ 47a-21. Security deposits

(a) Definitions. As used in this chapter:

(1) “Commissioner” means the Banking Commissioner.

(2) “Escrow account” means any account at a financial institution which is not subject to execution by the creditors of the person in whose name such account is maintained and includes a clients' funds account.

(3) “Escrow agent” means the person in whose name an escrow account, including a clients' funds account, is maintained.

(4) “Financial institution” means any state bank and trust company, national bank, savings bank, federal savings bank, savings and loan association, and federal savings and loan association that is located in this state.

(5) “Forwarding address” means the address to which a security deposit may be mailed for delivery to a former tenant.

(6) “Landlord” means any landlord of residential real property, and includes (A) any receiver; (B) any person who is a successor to a landlord or to a landlord's interest; and (C) any tenant who sublets his premises.

(7) “Receiver” means any person who is appointed or authorized by any state, federal or probate court to receive rents from tenants, and includes trustees, executors, administrators, guardians, conservators, receivers, and receivers of rent.

(8) “Rent receiver” means a receiver who lacks court authorization to return security deposits and to inspect the premises of tenants and former tenants.

(9) “Residential real property” means real property containing one or more residential units, including residential units not owned by the landlord, and containing one or more tenants who paid a security deposit.

(10) “Security deposit” means any advance rental payment other than an advance payment for the first month's rent and a deposit for a key or any special equipment.

(11) “Successor” to a landlord or to a landlord's interest means any person who succeeds to a landlord's interest whether by purchase, foreclosure or otherwise and includes a receiver.

(12) “Tenant” means a tenant, as defined in [section 47a-1](#), or a resident, as defined in [insection 21-64](#).

(13) “Tenant's obligations” means (A) the amount of any rental or utility payment due the landlord from a tenant; and (B) a tenant's obligations under the provisions of [section 47a-11](#).

(b) Amount of security deposit. (1) In the case of a tenant under sixty-two years of age, a landlord shall not demand a security deposit in an amount or value in excess of two months' periodic rent which may be in addition to the current month's rent.

(2) In the case of a tenant sixty-two years of age or older, a landlord shall not demand a security deposit in an amount or value in excess of one month's periodic rent, which may be in addition to the current month's rent. Upon the request of a tenant sixty-two years of age or older, any landlord who has received from such tenant a security deposit in an amount or value in excess of one month's periodic rent shall refund to such tenant the portion of such security deposit that exceeds one month's periodic rent.

(c) Exemption from attachment and execution. Assignment to successor. Any security deposit paid by a tenant shall remain the property of such tenant in which the landlord and his successor shall have a security interest, as defined in subdivision (35) of subsection (b) of [section 42a-1-](#)

201, to secure such tenant's obligations. A security deposit shall be exempt from attachment and execution by the creditors of the landlord or his successor and shall not be considered part of the estate of the landlord or his successor in any legal proceeding. Any voluntary or involuntary transfer of a landlord's interest in residential real estate to a successor shall constitute an assignment to such successor of such landlord's security interest in all security deposits paid by tenants of such transferred residential real estate.

(d) Payment of security deposit and interest at termination of tenancy. (1) Within the time specified in subdivisions (2) and (4) of this subsection, the person who is the landlord at the time a tenancy is terminated, other than a rent receiver, shall pay to the tenant or former tenant: (A) The amount of any security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages which any person who was a landlord of such premises at any time during the tenancy of such tenant has suffered as a result of such tenant's failure to comply with such tenant's obligations; and (B) any accrued interest due on such security deposit as required by subsection (i) of this section. If the landlord at the time of termination of a tenancy is a rent receiver, such rent receiver shall return security deposits in accordance with the provisions of subdivision (3) of this subsection.

(2) Upon termination of a tenancy, any tenant may notify his landlord in writing of such tenant's forwarding address. Within thirty days after termination of a tenancy, each landlord other than a rent receiver shall deliver to the tenant or former tenant at such forwarding address either (A) the full amount of the security deposit paid by such tenant plus accrued interest as provided in subsection (i) of this section, or (B) the balance of the security deposit paid by such tenant plus accrued interest as provided in subsection (i) of this section after deduction for any damages suffered by such landlord by reason of such tenant's failure to comply with such tenant's obligations, together with a written statement itemizing the nature and amount of such damages. Any such landlord who violates any provision of this subsection shall be liable for twice the amount or value of any security deposit paid by such tenant, except that, if the violation is the failure to deliver the accrued interest, such landlord shall only be liable for twice the amount of such accrued interest.

(3) (A) Any receiver who is authorized by the court appointing him receiver to return security deposits and to inspect the premises of any tenant shall pay security deposits and interest in accordance with the provisions of subdivisions (1) and (2) of this subsection from the operating income of such receivership to the extent that any such payments exceed the amount in any escrow accounts for such tenants. (B) Any rent receiver shall present any claim by any tenant for return of a security deposit to the court which authorized him to be a rent receiver. Such court shall determine the validity of any such claim and shall direct such rent receiver to pay from the escrow account or from the operating income of such property the amount due such tenant as determined by such court.

(4) Any landlord who does not have written notice of his tenant's or former tenant's forwarding address shall deliver any written statement and security deposit due to the tenant, as required by subdivision (2) of this subsection, within the time required by subdivision (2) of this subsection or within fifteen days after receiving written notice of such tenant's forwarding address, whichever is later.

(e) Liability of receiver and successor to landlord's interest in property re payment of security deposit. A successor, other than a receiver, to a landlord's interest in residential real property shall be liable for the claims of tenants of such property for return of any part of such security deposit which is or becomes due to such tenant during the time such successor is a landlord. A

receiver's liability for payment of security deposits and interest under this section shall be limited to the balance in any escrow account for such tenants maintained by such receiver in such receivership in accordance with subsection (h) of this section and to the operating income generated in such receivership.

(f) Nonresident landlord. Any landlord who is not a resident of this state shall appoint in writing the Secretary of the State as his attorney upon whom all process in any action or proceeding against such landlord may be served.

(g) Action to reclaim security deposit. Any person may bring an action in replevin or for money damages in any court of competent jurisdiction to reclaim any part of his security deposit which may be due. This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled.

(h) Escrow deposit. (1) Each landlord shall immediately deposit the entire amount of all security deposits received by him on or after October 1, 1979, from his tenants into one or more escrow accounts for such tenants in a financial institution. Such landlord shall be escrow agent of such account. Within seven days after a written request by the commissioner for the name of each financial institution in which any such escrow accounts are maintained and the account number of each such escrow account, a landlord shall deliver such requested information to the commissioner.

(2) Each landlord and each successor to the landlord's interest shall maintain each such account as escrow agent and shall not withdraw the amount of any security deposit or accrued interest on such amount, as provided in subsection (i) of this section, that is in any escrow account from such account except as provided in this section.

(3) (A) Whenever any real estate is voluntarily or involuntarily transferred from a landlord, other than a receiver, to his successor, including a receiver, such landlord shall withdraw from the escrow account and deliver to his successor the entire amount of security deposits paid by tenants of the property being transferred, plus accrued interest provided for in subsection (i) of this section. If at the time of transfer of such real estate the funds in such account are commingled with security deposits paid by tenants in real estate not being transferred to such successor, and if at such time the funds in such account are less than the amount of security deposits paid by all tenants whose security deposits are contained in such account, such landlord shall deliver to such successor a pro rata share of security deposits paid by tenants of the real estate being transferred to such successor. Any successor to a landlord shall immediately deposit the entire amount of funds delivered to him in accordance with this subdivision into an escrow account as provided in subdivision (1) of this subsection and shall maintain such account as escrow agent in accordance with the provisions of this section. (B) Whenever any real estate is transferred from a receiver to his successor, such receiver shall dispose of the escrow accounts as ordered by the court which appointed him receiver. The order of such court shall provide for the priority of the present and future rights of tenants to security deposits paid by them over the rights of any secured or unsecured creditor of any person and shall provide that the funds in such account shall be delivered to the successor of such receiver for immediate deposit in an escrow account for tenants who paid security deposits.

(4) No person shall withdraw funds from any escrow account except as follows: (A) Within the time specified in subsection (d) of this section, each escrow agent shall withdraw and disburse the amount of any security deposit due to any tenant upon the termination of such tenancy, in accordance with subsection (d) of this section, together with accrued interest thereon as provided in subsection (i) of this section. (B) At the time provided for in subsection (i) of this section, each

escrow agent shall withdraw from such account and pay to each tenant any accrued interest due and payable to any tenant in accordance with the provisions of said subsection. (C) The escrow agent may withdraw and personally retain interest credited to and not previously withdrawn from such account to the extent such interest exceeds the amount of interest being earned by tenants as provided in subsection (i) of this section. (D) The escrow agent may withdraw and personally retain the amount of damages withheld, in accordance with the provisions of subsection (d) of this section, from payment of a security deposit to a tenant. (E) The escrow agent may at any time during a tenancy withdraw and pay to a tenant all or any part of a security deposit together with accrued interest on such amount as provided in subsection (i) of this section. (F) The escrow agent shall withdraw and disburse funds in accordance with the provisions of subdivision (3) of this subsection. (G) The escrow agent may transfer any escrow account from one financial institution to another and may transfer funds from one escrow account to another provided that all security deposits in escrow accounts remain continuously in escrow accounts.

(i) Payment of interest on security deposits. (1) On and after July 1, 1993, each landlord other than a landlord of a residential unit in any building owned or controlled by any educational institution and used by such institution for the purpose of housing students of such institution and their families, and each landlord or owner of a mobile manufactured home or of a mobile manufactured home space or lot or park, as such terms are defined in [subdivisions \(1\), \(2\) and \(3\) of section 21-64](#), shall pay interest on each security deposit received by such landlord at a rate of not less than the average rate paid, as of December 30, 1992, on savings deposits by insured commercial banks as published in the Federal Reserve Board Bulletin rounded to the nearest one-tenth of one percentage point, except in no event shall the rate be less than one and one-half per cent. On and after January 1, 1994, the rate for each calendar year shall be not less than the deposit index, as defined in subdivision (2) of this subsection, for that year, except in no event shall the rate be less than one and one-half per cent. On and after January 1, 2012, the rate for each calendar year shall be not less than the deposit index, as defined in subdivision (2) of this subsection, for that year. On the anniversary date of the tenancy and annually thereafter, such interest shall be paid to the tenant or resident or credited toward the next rental payment due from the tenant or resident, as the landlord or owner shall determine. If the tenancy is terminated before the anniversary date of such tenancy, or if the landlord or owner returns all or part of a security deposit prior to termination of the tenancy, the landlord or owner shall pay the accrued interest to the tenant or resident not later than thirty days after such termination or return. In any case where a tenant or resident has been delinquent for more than ten days in the payment of any monthly rent, such resident or tenant shall forfeit any interest that would otherwise be payable to such resident or tenant for that month, except that there shall be no such forfeiture if, pursuant to a provision of the rental agreement, a late charge is imposed for failure to pay such rent within the time period provided by [section 47a-15a](#). No landlord or owner shall increase the rent due on any quarters or property subject to the provisions of this section because of the requirement that interest be paid on any security deposit made with respect to such quarters or property.

(2) The commissioner shall publish the rate that takes effect July 1, 1993, in the Department of Banking news bulletin no later than July 15, 1993. The deposit index for each calendar year shall be equal to the average rate paid on savings deposits by insured commercial banks as last published in the Federal Reserve Board Bulletin in November of the prior year. The commissioner shall determine the deposit index for each calendar year and publish such deposit index in the Department of Banking news bulletin no later than December fifteenth of the prior year. The commissioner shall also cause such rates to be disseminated in a manner designed to

come to the attention of landlords and tenants including, but not limited to, the issuance of press releases and public service announcements, the encouragement of news stories in the mass media and the posting of conspicuous notices at financial institutions. For purposes of this subsection, "Federal Reserve Board Bulletin" means the monthly survey of selected deposits published as a special supplement to the Federal Reserve Statistical Release Publication H.6 published by the Board of Governors of the Federal Reserve System or, if such bulletin is superseded or becomes unavailable, a substantially similar index or publication.

(j) Investigation of complaints by commissioner. Order. Enforcement. Regulations. (1) The commissioner may receive and investigate complaints regarding any alleged violation of subsections (b), (d), (h) or (i) of this section, provided the commissioner shall not have jurisdiction over the refusal or other failure of any landlord to return all or part of a security deposit if such failure results from the landlord's good faith claim that the landlord has suffered damages as a result of a tenant's failure to comply with such tenant's obligations whether or not the existence or amount of alleged damages is disputed by the tenant. For purposes of this section a good faith claim is deemed to be a claim for actual damages suffered by the landlord for which written notification of such damages has been given to the tenant in accordance with the provisions of subdivisions (1), (2) and (4) of subsection (d) of this section. For the purposes of such investigation, any person who is or was a landlord shall be subject to the provisions of [section 36a-17](#).

(2) If the commissioner determines that any landlord has violated any provision of this section over which the commissioner has jurisdiction, the commissioner may, in accordance with [section 36a-52](#), order such person to cease and desist from such practices and to comply with the provisions of this section.

(3) The commissioner may adopt regulations, in accordance with chapter 54,¹ to carry out the purposes of this section.

(k) Penalties. (1) Any person who is a landlord at the time of termination of a tenancy and who knowingly and wilfully fails to pay all or any part of a security deposit when due shall be subject to a fine of not more than two hundred fifty dollars for each offense, provided it shall be an affirmative defense under this subdivision that such failure was caused by such landlord's good faith belief that he was entitled to deduct the value of damages he has suffered as a result of such tenant's failure to comply with such tenant's obligations.

(2) Any person who knowingly and wilfully violates the provisions of subsection (h) of this section on or after October 1, 1979, shall be subject to a fine of not more than five hundred dollars or imprisonment of not more than thirty days or both for each offense. It shall be an affirmative defense under the provisions of this subdivision that at the time of the offense, such person leased residential real property to fewer than four tenants who paid a security deposit.

(3) Any person who is a landlord at the time an interest payment is due under the provisions of subsection (i) of this section and who knowingly and wilfully violates the provisions of such subsection shall be subject to a fine of not more than one hundred dollars for each offense.

(4) No financial institution shall be liable for any violation of this section except for any violation in its capacity as a landlord or successor to a landlord's interest.

(l) Rights not limited. Nothing in this section shall be construed as a limitation upon: (1) The power or authority of the state, the Attorney General or the commissioner to seek administrative, legal or equitable relief permitted by the general statutes or at common law; or (2) the right of any tenant to bring a civil action permitted by the general statutes or at common law.

Practice Book 1998, § 21-1

§ 21-1. Appointment of Temporary Receiver in Chambers

All applications for the appointment of a receiver shall be made in a civil action, and at any time after the writ and complaint has been signed. As ancillary thereto, an application may be made, when the court before which such action is pending is not in actual session, to a judge in chambers for the appointment of a temporary receiver, after notice to the parties in interest, unless the exigencies of the case require otherwise; and said judge may appoint a temporary receiver, and upon such appointment shall fix a time for a hearing upon the confirmation of such temporary receiver and the appointment of appraisers, and cause not less than six days' notice thereof to be given to all parties in interest by mail and otherwise if deemed necessary. Upon such hearing or an adjournment thereof, the judge may appoint two or more appraisers and either confirm the temporary receiver or make a new appointment of a temporary receiver. The appointment of a temporary receiver shall continue until a permanent receiver shall be appointed or until the further order of the court.

Practice Book 1998, § 21-2

§ 21-2. Permanent Receiver

The temporary receiver shall cause the case to be duly assigned for trial in the court at the earliest practicable day after the return day of the action, for the appointment of a permanent receiver, and in cases where the day for such hearing has not been fixed before the opening of the session of the court to which said proceeding is returnable, the temporary receiver, on or before such opening, shall make and place upon the short calendar list an application therefor.

Practice Book 1998, § 21-3

§ 21-3. Appointments by Court

(a) All appointments of receivers shall be temporary appointments, unless made by the court after the return day of the action, and upon full notice and opportunity to be heard to all concerned. If made after the return day the appointment shall be upon written motion addressed to the court. If made before the return day the party desiring the appointment shall file a written application as is required where the appointment is by a judge in chambers.

(b) In either case the court making a temporary appointment shall forthwith make an order for a hearing upon the confirmation of such temporary appointment and the appointment of two or more appraisers, and direct the temporary receiver to give notice of such hearing and of the time and place thereof to all parties concerned by public advertisement if it seems advisable and by causing a written or printed notice thereof to be mailed, postpaid, to all known creditors and to all stockholders of record of the corporation, if the defendant be a corporation, at least six days before such hearing.

(c) At said hearing, if after the return day, the court may appoint a permanent receiver, who may be either the temporary receiver or a new appointee. If said hearing is before the return day, then such appointment shall be temporary only, and such temporary receiver shall cause the matter of his or her confirmation as permanent receiver or the appointment of some other person as permanent receiver to be brought before the court as provided in the case of temporary receivers appointed by a judge in chambers.

Practice Book 1998, § 21-4

§ 21-4. Receiver to Give Bond

Every receiver, temporary or permanent, before assuming to act as such, shall file with the clerk of the court by which, or by a judge of which, he or she was appointed, a bond with such surety or sureties, and for such an amount as such court or judge may order and approve, payable to the state and conditioned for the faithful performance of the receiver's official duties. (See [General Statutes § 52-506](#) and annotations.)

Practice Book 1998, § 21-5

§ 21-5. Inventory

Every receiver, upon confirmation or permanent appointment, shall forthwith, and without any order therefor, prepare and file a sworn inventory of the assets of the estate, which shall contain an appraisal of each item therein, made by the appraisers appointed for such purpose. Every temporary receiver, upon original appointment, shall make an inventory, unless otherwise ordered.

Practice Book 1998, § 21-6

§ 21-6. Insolvent Estates to Be Liquidated

At the time of the appointment or of the confirmation of a temporary receiver or the appointment of a permanent receiver, such inquiry as is practicable shall be made by the judge or court relative to the solvency of the estate. When, upon such inquiry or thereafter, it appears to the judge or court that the estate is insolvent, the estate shall be promptly liquidated and no further continuance of the business, except for the purpose of liquidation, shall be permitted, unless, because of exceptional circumstances, it shall be otherwise ordered.

Practice Book 1998, § 21-7

§ 21-7. Presentation and Allowance of Claims--Presentation

The court shall, in the judgment appointing a permanent receiver, limit a time for the presentation of claims against the estate and direct that the receiver forthwith give notice thereof, and that all claims not exhibited within said time will be barred, to all known creditors, by mailing a written or printed copy of such order. The court may provide for further notice if it deems the same advisable.

Practice Book 1998, § 21-8

§ 21-8. Presentation and Allowance of Claims--Allowance; Hearing

(a) The receiver shall, within two weeks after the order of notice, make a return of compliance with it, and within a like time after the expiration of the limitation file a list of claims presented, separately stating those in which a preference is claimed, and make application for an order of the court thereon.

(b) The court shall thereupon by its order allow or disallow, in whole or in part, the claims so returned and any preferences claimed and order the receiver forthwith to give written notice to each claimant whose claim has been disallowed in whole or in part that unless the claimant shall within two weeks from the giving of such notice by the receiver bring an application to the court for the allowance of the claim, the same shall be barred; and any such application shall be speedily heard and the decision thereon shall, subject to appeal, be final. Any creditor may intervene in the proceeding.

Practice Book 1998, § 21-9

§ 21-9. Presentation and Allowance of Claims--Extensions of Time

The court, for good cause shown, may extend the time for presenting a claim or claims to the receiver, and may extend the time for making application for the allowance of a claim or claims disallowed in whole or in part.

Practice Book 1998, § 21-10

§ 21-10. Presentation and Allowance of Claims--Hearing Before Action on Allowance

The court may, upon due notice to a claimant, hear the claimant's claim before allowing or disallowing the same and, subject to appeal, the decision thereon shall be final.

Practice Book 1998, § 21-11

§ 21-11. Continuance of Business

No order for the continuance of a business shall be made for a greater period of time than four months, except for special cause shown. For cause shown, such orders may be renewed from time to time, as the exigencies of the case may require.

Practice Book 1998, § 21-12

§ 21-12. Reports Where Business Continued

When a receiver is continuing business under the order of a judge or the court, the receiver shall, during the first ten days of each month, file a report showing the results of operating the business during the preceding month. The receiver shall furnish supplemental schedules and information if required by the court.

Practice Book 1998, § 21-13

§ 21-13. Semiannual Summary of Orders

Every receiver shall, on the first Tuesdays of April and October of each year, file a summary statement of all orders made in said cause during the six months preceding, and the doings thereunder. The clerk shall refer the statement to the judge holding the term or session then pending, or held next thereafter, who shall, upon examination of the same, make such further orders in said cause as are deemed necessary, and may direct that the cause be placed on the short calendar for an order approving the statement.

Practice Book 1998, § 21-14

§ 21-14. Semiannual Accounts

Every receiver upon an estate which has been in process of settlement more than four months (except receivers of state banks and trust companies) shall during the first week of April and October of each year sign, swear to and file with the court a full and detailed account of the condition and prospects of the estate as of the close of the next preceding month, including therein a statement of realization and liquidation. The receiver shall furnish supplemental schedules and information if required by the court. The receiver shall cause a motion for the approval of the report to be placed on the short calendar.

Practice Book 1998, § 21-15

§ 21-15. Orders in Chambers

Whenever any judge shall have appointed a receiver in chambers, all applications for orders in said proceeding made out of court shall, except in the case of such judge's absence from the state, the judge's disability or a request in writing to the contrary, be made to such judge.

Practice Book 1998, § 21-16

§ 21-16. Duty of Clerks

The clerks shall see that these rules are enforced and shall promptly report any violations thereof to the court.

Practice Book 1998, § 21-17

§ 21-17. Removal of Receivers

Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed the receiver, or, if such court is not in session, a judge thereof, may fill the vacancy. (See [General Statutes § 52-513](#) and annotations.)

Practice Book 1998, § 21-18

§ 21-18. Ancillary Receivers

These rules, so far as applicable, shall govern the appointment and duties of ancillary receivers.

Practice Book 1998, § 21-19

§ 21-19. Receiver of Rents--Applicability of Previous Sections

Sections 21-1 through 21-15 shall not apply to receivers of rents.

Practice Book 1998, § 21-20

§ 21-20. Receiver of Rents--Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or plaintiff's attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.

Practice Book 1998, § 21-21

§ 21-21. Receiver of Rents--Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of _____ and described as (*describe generally, e.g., No. 93 Maple Street*):

Now, therefore, if said A shall well and truly perform his or her duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

Practice Book 1998, § 21-22

§ 21-22. Receiver of Rents--Discharge

Any party in interest may at any time move for the discharge of the receiver.

Practice Book 1998, § 21-23

§ 21-23. Receiver of Rents--Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by the judge in chambers to the court in which the action may be pending.

Practice Book 1998, § 21-24

§ 21-24. Receiver of Rents--Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

DELAWARE

8 Del.C. § 291

§ 291. Receivers for insolvent corporations; appointment and powers

Whenever a corporation shall be insolvent, the Court of Chancery, on the application of any creditor or stockholder thereof, may, at any time, appoint 1 or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary.

8 Del.C. § 292

§ 292. Title to property; filing order of appointment; exception

(a) Trustees or receivers appointed by the Court of Chancery of and for any corporation, and their respective survivors and successors, shall, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal or mixed of whatsoever nature, kind, class or description, and wheresoever situate, except real estate situate outside this State.

(b) Trustees or receivers appointed by the Court of Chancery shall, within 20 days from the date of their qualification, file in the office of the recorder in each county in this State, in which any real estate belonging to the corporation may be situated, a certified copy of the order of their appointment and evidence of their qualification.

(c) This section shall not apply to receivers appointed pendente lite.

8 Del.C. § 293

§ 293. Notices to stockholders and creditors

All notices required to be given to stockholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the Register in Chancery, unless otherwise ordered by the Court of Chancery.

8 Del.C. § 294

§ 294. Receivers or trustees; inventory; list of debts and report

Trustees or receivers shall, as soon as convenient, file in the office of the Register in Chancery of the county in which the proceeding is pending, a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. They shall make a report to the Court of their proceedings, whenever and as often as the Court shall direct.

8 Del.C. § 295

§ 295. Creditors' proofs of claims; when barred; notice

All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the office of the Register in Chancery of the county in which the proceeding is pending within the time fixed by and in accordance with the procedure established

by the rules of the Court of Chancery. All creditors and claimants failing to do so, within the time limited by this section, or the time prescribed by the order of the Court, may, by direction of the Court, be barred from participating in the distribution of the assets of the corporation. The Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

8 Del.C. § 296

§ 296. Adjudication of claims; appeal

(a) The Register in Chancery, immediately upon the expiration of the time fixed for the filing of claims, in compliance with § 295 of this title, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within 30 days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall forthwith notify the creditors whose claims are disputed of such trustee's or receiver's decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before such trustee or receiver touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of such trustee's or receiver's determination.

(b) Every creditor or claimant who shall have received notice from the receiver or trustee that such creditor's or claimant's claim has been disallowed in whole or in part may appeal to the Court of Chancery within 30 days thereafter. The Court, after hearing, shall determine the rights of the parties.

8 Del.C. § 297

§ 297. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the Court of Chancery may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the Court, there to remain subject to the order of the Court, and to be disposed of as the Court shall direct.

8 Del.C. § 298

§ 298. Compensation, costs and expenses of receiver or trustee

The Court of Chancery, before making distribution of the assets of a corporation among the creditors or stockholders thereof, shall allow a reasonable compensation to the receiver or trustee for such receiver's or trustee's services, and the costs and expenses incurred in and about the execution of such receiver's or trustee's trust, and the costs of the proceedings in the Court, to be first paid out of the assets.

8 Del.C. § 299

§ 299. Substitution of trustee or receiver as party; abatement of actions

A trustee or receiver, upon application by such receiver or trustee in the court in which any suit is pending, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of such receiver's or trustee's appointment. No action against a trustee or receiver of a corporation shall abate by reason of such receiver's or trustee's death, but, upon suggestion of the facts on the record, shall be continued against such receiver's or trustee's successor or against the corporation in case no new trustee or receiver is appointed.

8 Del.C. § 300

§ 300. Employee's lien for wages when corporation insolvent

Whenever any corporation of this State, or any foreign corporation doing business in this State, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of the corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding 2 months' wages respectively, which shall be paid prior to any other debt or debts of the corporation. The word "employee" shall not be construed to include any of the officers of the corporation.

8 Del.C. § 301

§ 301. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Court of Chancery in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

8 Del.C. § 302

§ 302. Compromise or arrangement between corporation and creditors or stockholders

(a) Whenever the provision permitted by § 102(b)(2) of this title is included in the original certificate of incorporation of any corporation, all persons who become creditors or stockholders thereof shall be deemed to have become such creditors or stockholders subject in all respects to that provision and the same shall be absolutely binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or stockholders of such corporation after such amendment shall be deemed to have become such creditors or stockholders subject in all respects to that provision and the same shall be absolutely binding upon them.

(b) The Court of Chancery may administer and enforce any compromise or arrangement made pursuant to the provision contained in § 102(b)(2) of this title and may restrain, pendente lite, all actions and proceedings against any corporation with respect to which the Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

8 Del.C. § 303

§ 303. Proceeding under the Federal Bankruptcy Code of the United States; effectuation

(a) Any corporation of this State, an order for relief with respect to which has been entered pursuant to the Federal Bankruptcy Code, 11 U.S.C.A. § 101 et seq., or any successor statute,

may put into effect and carry out any decrees and orders of the court or judge in such bankruptcy proceeding and may take any corporate action provided or directed by such decrees and orders, without further action by its directors or stockholders. Such power and authority may be exercised, and such corporate action may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed or elected in the bankruptcy proceeding (or a majority thereof), or if none be appointed or elected and acting, by designated officers of the corporation, or by a representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and stockholders of the corporation.

(b) Such corporation may, in the manner provided in subsection (a) of this section, but without limiting the generality or effect of the foregoing, alter, amend or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by this chapter; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by this chapter, in which case, however, no stockholder shall have any statutory right of appraisal of such stockholder's stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class; or lease its property and franchises to any corporation, if permitted by law.

(c) A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the foregoing provisions, shall be filed with the Secretary of State in accordance with § 103 of this title, and, subject to § 103(d) of this title, shall thereupon become effective in accordance with its terms and the provisions hereof. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed or elected in the bankruptcy proceeding (or a majority thereof), or, if none be appointed or elected and acting, by the officers of the corporation, or by a representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such Federal Bankruptcy Code or successor statute.

(d) This section shall cease to apply to such corporation upon the entry of a final decree in the bankruptcy proceeding closing the case and discharging the trustee or trustees, if any; provided however, that the closing of a case and discharge of trustee or trustees, if any, will not affect the validity of any act previously performed pursuant to subsections (a) through (c) of this section.

(e) On filing any certificate, agreement, report or other paper made or executed pursuant to this section, there shall be paid to the Secretary of State for the use of the State the same fees as are payable by corporations not in bankruptcy upon the filing of like certificates, agreements, reports or other papers.

8 Del.C. § 279

§ 279. Trustees or receivers for dissolved corporations; appointment; powers; duties

When any corporation organized under this chapter shall be dissolved in any manner whatever, the Court of Chancery, on application of any creditor, stockholder or director of the corporation,

or any other person who shows good cause therefor, at any time, may either appoint 1 or more of the directors of the corporation to be trustees, or appoint 1 or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid.

FLORIDA

Rule 1.620. Receivers

(a) Notice. The provisions of [rule 1.610](#) as to notice shall apply to applications for the appointment of receivers.

(b) Report. 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. When a receiver neglects to file the inventory and account, the court shall enter an order requiring the receiver to file such inventory and account and to pay out of the receiver's own funds the expenses of the order and the proceedings thereon within not more than 20 days after being served with a copy of such order.

(c) Bond. The court may grant leave to put the bond of the receiver in suit against the sureties without notice to the sureties of the application for such leave.

GEORGIA

Ga. Code Ann., § 9-8-1

§ 9-8-1. Grounds for appointment

When any fund or property is in litigation and the rights of either or both parties cannot otherwise be fully protected or when there is a fund or property having no one to manage it, a receiver of the same may be appointed by the judge of the superior court having jurisdiction thereof.

Ga. Code Ann., § 9-8-2

§ 9-8-2. Protection of property in danger of destruction and loss

Equity may appoint receivers to take possession of and protect trust or joint property and funds whenever the danger of destruction and loss shall require such interference.

Ga. Code Ann., § 9-8-3

§ 9-8-3. Appointment, in order to protect assets of debtor; notice; discretion as to terms

Equity may appoint a receiver to take possession of and hold, subject to the direction of the court, any assets charged with the payment of debts where there is manifest danger of loss, destruction, or material injury to those interested. Under extraordinary circumstances, a receiver may be appointed before and without notice to the trustee or other person having charge of the assets. The terms on which a receiver is appointed shall be in the discretion of the court.

Ga. Code Ann., § 9-8-4

§ 9-8-4. Power of appointment to be cautiously exercised

The power of appointing receivers should be prudently and cautiously exercised and except in clear and urgent cases should not be resorted to.

Ga. Code Ann., § 9-8-5

§ 9-8-5. Intervention in equitable proceedings

Where property has been placed in the hands of a receiver, all persons properly seeking to assert equitable remedies against such assets shall become parties to the case by intervention and shall prosecute their remedies therein.

Ga. Code Ann., § 9-8-6

§ 9-8-6. Liens divested by receiver's sale

Persons holding liens on property in the hands of a receiver may be made parties to the case at any time. Unless otherwise provided in the order, liens upon the property held by any parties to the record, shall be dissolved by the receiver's sale and transferred to the funds arising from the sale of the property.

Ga. Code Ann., § 9-8-7

§ 9-8-7. When fund may be invested

The presiding judge, in his discretion under the law, may order any funds, in the hands of a receiver or any other officer of court, while awaiting the termination of protracted litigation, to be invested as provided in the case of executors and administrators.

Ga. Code Ann., § 9-8-8

§ 9-8-8. Receiver as officer of court; removal of receiver

(a) The receiver is an officer and servant of the court appointing him, is responsible to no other tribunal than the court, and must in all things obey its direction.

(b) The receiver shall discharge his trust according to the orders or decrees of the court appointing him. He is at all times subject to its orders and may be brought to account and removed at its pleasure.

Ga. Code Ann., § 9-8-9

§ 9-8-9. Returns, how made

Receivers of corporations shall be amenable to and shall make their returns to the superior court of the county where they reside at the time of the appointment.

Ga. Code Ann., § 9-8-10

§ 9-8-10. Bonds required in discretion of court

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. If bond is so required, the judge shall fix the amount thereof and shall determine the sufficiency of the security. The judge shall also regulate the compensation paid to the receiver.

Ga. Code Ann., § 9-8-11

§ 9-8-11. Receiver liable for money in bank, when

Where funds are in the hands of a receiver pending a final disposition, the receiver may deposit the funds into a bank or trust company which is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or successor entities. If the receiver fails to utilize such an insured bank or trust company, he shall be personally liable for any resulting loss.

Ga. Code Ann., § 9-8-12

§ 9-8-12. Garnishment of receivers

A receiver shall not be subject to the process of garnishment.

Ga. Code Ann., § 9-8-13

§ 9-8-13. Receiver's and attorney's fees

(a) In all cases where a receiver is appointed under the laws of this state to take charge of the assets of any person, firm, or corporation and a fund is brought into court for distribution, the court having jurisdiction thereof shall award to counsel filing the petition and representing the moving creditor or creditors, out of the fund, no greater sum as fees for services rendered in filing the petition and bringing the fund into court than the services are actually worth, taking as a basis therefor the amount represented by the counsel in the original petition and the assets brought into the hands of the receiver by the services of counsel not including the assets turned over to the receiver by defendants under order of the court.

(b) In all cases where a receiver is appointed to take charge of the assets of any person, firm, or corporation, the court having jurisdiction thereof shall award to the receiver as full compensation for his services, out of the fund coming into his hands, 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. Where the business of an insolvent person, firm, or corporation is continued and conducted by a receiver, the judge may allow such compensation as may be reasonable for such services in lieu of commissions, not exceeding the compensation paid by persons in the usual and regular conduct of such business.

(c) In all cases, the presiding judge or other competent tribunal shall allow such compensation to the attorney or attorneys filing the original petition and to the receiver or receivers appointed thereunder as their services are reasonably worth.

Ga. Code Ann., § 9-8-14

§ 9-8-14. Expenses of giving bond allowable

(a) Receivers who are required by law to give bond as such who have given as security on such bonds one or more guaranty companies, surety companies, fidelity insurance companies, or fidelity and deposit companies, as authorized by law, 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 as the court, judge, or other officer by whom they were appointed allows.

(b) Any court, judge, or other officer whose duty it is to pass upon the account of any person or corporation required to execute a bond with surety or sureties, whenever the person or corporation has given any such company or companies as security as provided in subsection (a) of this Code section, shall allow in the settlement of the account a reasonable sum for the expenses and premiums incurred in securing the surety, not exceeding the amounts specified in the subsection.

IDAHO

I.C. § 8-601

§ 8-601. Grounds for appointment

A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

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 jointly 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, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the 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 in proceedings 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 case where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
- 5-A. A receiver for an irrigation district may be appointed in an action brought by bondholders or other creditors, water users, and/or land owners of such irrigation district, where it is made to appear to the satisfaction of the court that such irrigation district has failed to elect its officers, or such officers have failed to qualify or are not acting, or such district has ceased to function, or has been abandoned, or is insolvent, or is in imminent danger of insolvency, or is being grossly mismanaged, or has been or ought to be dissolved, and there are rights or properties of such irrigation district which are threatened to become lost or dissipated, that should be preserved for the benefit of its creditors or other parties of interest in such irrigation district.
6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

I.C. § 8-601A

§ 8-601A. Additional grounds for appointment of receivers

(1) At any time after the filing for record of a notice of default and election to sell real property under a power of sale contained in a deed of trust, in accordance with the provisions of [section 45-1505\(3\), Idaho Code](#), the trustee or beneficiary of the deed of trust may apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property and of any personal property subject to the deed of trust or to related security documents.

(2) A receiver may be appointed, pursuant to the provisions of subsection (1) of this section, or of [section 8-601, Idaho Code](#), where it appears that personal property subject to the deed of trust or mortgage, or to related security documents, is in danger of being lost, removed, concealed, materially injured or destroyed, that real property subject to the deed of trust or mortgage is in

danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

I.C. § 8-602

§ 8-602. Appointment upon dissolution of corporation

Upon the dissolution of any corporation the district 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 member or stockholder thereof, may appoint one (1) 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.

I.C. § 8-603

§ 8-603. Who may be appointed--Undertaking upon ex parte appointment--Additional undertaking

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. 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.

I.C. § 8-604

§ 8-604. Oath and bond of receiver

Before entering upon his duties the receiver must be sworn to perform them faithfully, and with one (1) 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.

I.C. § 8-605

§ 8-605. 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, 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.

I.C. § 8-606

§ 8-606. Investment of funds

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.

ILLINOIS

735 ILCS 5/2-415

5/2-415. Appointment of and actions against receivers

§ 2-415. Appointment of and actions against receivers. (a) Before any receiver shall be appointed the party making the application shall give bond to the adverse party in such penalty as the court may order and with security to be approved by the court conditioned to pay all damages including reasonable attorney's fees sustained by reason of the appointment and acts of such receiver, in case the appointment of such receiver is revoked or set aside. Bond need not be required, 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.

(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.

(c) Every receiver of any property appointed by any court of this State may be sued in respect of any act or transaction of the receiver in carrying on the business connected with the property, without the previous leave of the court in which the receiver was appointed; but the action shall be subject to the jurisdiction of the court in which the receiver was appointed, so far as the same is necessary to the ends of justice.

INDIANA

IC 32-30-5-1

32-30-5-1 Appointment; cases where authorized

Sec. 1. 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.

IC 32-30-5-2

32-30-5-2 Persons ineligible for appointment

Sec. 2. 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.

IC 32-30-5-3

32-30-5-3 Oath of office; undertaking

Sec. 3. 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.

IC 32-30-5-4

32-30-5-4 Possession of money; order of court; security

Sec. 4. 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.

IC 32-30-5-5

32-30-5-5 Order of court; contempt; deposit by sheriff

Sec. 5. 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.

IC 32-30-5-6

32-30-5-6 Loans; consent

Sec. 6. 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.

IC 32-30-5-7

32-30-5-7 Powers and duties

Sec. 7. 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.

IC 32-30-5-9

32-30-5-9 Appointment; appearance; notice; affidavit

Sec. 9. 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.

IC 32-30-5-10

32-30-5-10 Appeal to supreme court

Sec. 10. (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.

IC 32-30-5-11

32-30-5-11 Information required; proof of appointment unnecessary

Sec. 11. 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.

IC 32-30-5-12

32-30-5-12 Record book

Sec. 12. The clerk of the court of each county shall keep a record book suitable to enter and record statements of assets and liabilities.

IC 32-30-5-13

32-30-5-13 Claims against assets; filing

Sec. 13. 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.

IC 32-30-5-14

32-30-5-14 Filing of account or report required

Sec. 14. 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.

IC 32-30-5-15

32-30-5-15 Contents of account or report

Sec. 15. 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.

IC 32-30-5-16

32-30-5-16 Petition for order requiring filing of account

Sec. 16. 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.

IC 32-30-5-17

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

Sec. 17. (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.

IC 32-30-5-18

32-30-5-18 Objections or exceptions

Sec. 18. (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.

IC 32-30-5-19

32-30-5-19 Hearing on account or report

Sec. 19. 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.

IC 32-30-5-20

32-30-5-20 Approval of partial account or report

Sec. 20. 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.

IC 32-30-5-21

32-30-5-21 Approval of final account or report and performance and compliance with court order

Sec. 21. 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.

IC 32-30-5-22

32-30-5-22 Entitlement to change of judge or venue

Sec. 22. (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.

IOWA

I.C.A. § 680.1

680.1. Appointment

On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

I.C.A. § 680.2

680.2. Permissible proofs

Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned.

I.C.A. § 680.3

680.3. Oath and bond

Before entering upon the discharge of the receiver's duties, the receiver must be sworn faithfully to discharge the trust to the best of the receiver's ability, and must also file with the clerk a bond with sureties, to be approved by the clerk, in a penalty to be fixed by the court, and conditioned for the faithful discharge of the receiver's duties, and that the receiver will obey the orders of the court in respect thereto.

I.C.A. § 680.4

680.4. Powers

Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to the receiver as may be authorized by law or ordered by the court.

I.C.A. § 680.5

680.5. Priority of liens

Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination.

I.C.A. § 680.6

680.6. Taxes as prior claim--nonnecessity to file

When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver and claims therefor need not be filed with said receiver.

I.C.A. § 680.7

680.7. Claims entitled to priority

When the property of any person, partnership, company, or corporation has been placed in the hands of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.
2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.
3. Debts owing to employees for labor or work performed or services rendered as provided in section 626.69.

I.C.A. § 680.8

680.8. Nonapplicability

The provisions of section 680.7 shall not apply to the receivership of state banks, as defined in section 524.105, trust companies, or private banks. In addition, in the receivership of such state banks and trust companies, or private banks, no preference or priority shall be allowed as is provided in section 680.7 except for labor or wage claims as provided by statute.

I.C.A. § 680.9

680.9. Legislative intent

The provisions of section 680.8 are declaratory of the intent of the legislature and of its interpretation of the provisions of section 680.7.

I.C.A. § 680.10

680.10. Discovery of assets

The court having direction or control of a receiver may, on its own motion, or on motion of the receiver, require any person suspected of having taken wrongful possession of any of the effects of any person, corporation, or partnership for which said receiver has been appointed, or of having had such effects under the person's control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court may order the delivery thereof to the receiver.

I.C.A. § 680.11

680.11. Contempt

If, on being served with the order of the court requiring the person to do so, any person fails to appear in accordance therewith, or if, having appeared, the person refuses to answer any questions which the court thinks proper to be put to the person in the course of such examination, or if the person fails to comply with the order of the court requiring the person to deliver any such property or effects to the receiver, the person may be committed to the jail of the county until the person does.

I.C.A. § 628.1

628.1. Place of redemption

All redemptions made under the provisions of this chapter shall be made in the county where the sale is had.

I.C.A. § 628.1A

628.1A. Application of this chapter

This chapter does not apply in an action to foreclose a real estate mortgage if the plaintiff has elected foreclosure without redemption under [section 654.20](#).

I.C.A. § 628.2

628.2. When sale absolute

When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed.

I.C.A. § 628.3

628.3. Redemption by debtor

The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold.

I.C.A. § 628.4

628.4. Redemption prohibited

A party who has stayed execution on the judgment is not entitled to redeem.

I.C.A. § 628.5

628.5. Redemption by creditors

If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption.

I.C.A. § 628.6

628.6. Mechanic's lien before judgment

A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem.

I.C.A. § 628.7

628.7. Probate creditor

The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court may direct, and shall be determined with due regard to rights of all persons interested.

I.C.A. § 628.8

628.8. Redemption by creditors from each other

Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided.

I.C.A. § 628.9

628.9. Senior creditor

When a senior creditor thus redeems from the senior creditor's junior, the senior creditor is required to pay off only the amount of those liens which are paramount to the senior creditor's own, with the interest and costs appertaining to those liens.

I.C.A. § 628.10

628.10. Junior may prevent

The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor.

I.C.A. § 628.11

628.11. Terms

The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof.

I.C.A. § 628.12

628.12. Mortgage not matured--interest

Where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, the mortgagee shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption.

I.C.A. § 628.13

628.13. By holder of title

The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of the holder's own lien, or the amount the holder has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on the holder's own judgment from the time of said credit, in each case including costs. Redemption may also be made by the titleholder presenting to the clerk of the district court the sheriff's certificate of sale properly assigned to the titleholder, whereupon the clerk of the district court shall cancel the certificate.

I.C.A. § 628.14

628.14. By junior from senior creditor

When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from the creditor by virtue of a paramount lien.

I.C.A. § 628.15

628.15. After nine months

After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided.

I.C.A. § 628.16

628.16. Who gets property

Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely.

I.C.A. § 628.17

628.17. Claim extinguished

In case it is thus held by a redeeming creditor, the redeeming creditor's lien, and the claim out of which it arose, will be held to be extinguished, unless the redeeming creditor pursues the course pointed out in [sections 628.18 to 628.20](#), inclusive.

I.C.A. § 628.18

628.18. Mode of redemption

The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein the lienholder's affidavit, or that of the lienholder's agent or attorney, stating as nearly as practicable the nature of the lien and the amount still due and unpaid thereon.

I.C.A. § 628.19

628.19. Credit on lien

If the lienholder is unwilling to hold the property and credit the debtor thereon the full amount of the lienholder's lien, the lienholder must state the utmost amount the lienholder is willing to credit the debtor with.

I.C.A. § 628.20

628.20. Excess payment--credit

If the amount paid to the clerk is in excess of the prior bid and liens, the clerk shall refund the excess to the party paying the amount. If the clerk is the clerk of the district court where the judgment giving rise to the lien was entered, the clerk shall credit upon the lien the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed.

I.C.A. § 628.21

628.21. Contest determined

In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court as soon as practicable thereafter, upon such notice as it shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made.

I.C.A. § 628.22

628.22. Assignment of certificate

A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed.

I.C.A. § 628.23

628.23. Redemption of part of property

When the property has been sold in parcels, any distinct portion may be redeemed by itself.

I.C.A. § 628.24

628.24. Interest of tenant in common

When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately.

I.C.A. § 628.25

628.25. Transfer of debtor's right

The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem.

I.C.A. § 628.26

628.26. Agreement to reduce period of redemption

The mortgagor and the mortgagee of real property consisting of less than ten acres in size may agree and provide in the mortgage instrument that the period of redemption after sale on foreclosure of said mortgage as set forth in section 628.3 be reduced to six months, provided the mortgagee waives in the foreclosure action any rights to a deficiency judgment against the mortgagor which might arise out of the foreclosure proceedings. In such event the debtor will, in the meantime, be entitled to the possession of said real property; and if such redemption period is so reduced, for the first three months after sale such right of redemption shall be exclusive to the debtor, and the time periods in sections 628.5, 628.15, and 628.16, shall be reduced to four months.

I.C.A. § 628.26A

628.26A. Agreement to extend period of redemption--agricultural land

Notwithstanding [section 628.3](#), the debtor and the mortgagee of agricultural land after the filing of the foreclosure petition, may enter into a written agreement to extend the debtor's period of redemption up to five years, and may set forth other terms and conditions of the extended redemption as agreed upon by the parties, including allowing the debtor to lease the property. However, the rights of the debtor and other parties who have a secured interest in the agricultural land shall not be reduced beyond those set forth in this chapter. The agreement entered into by the debtor and the mortgagee pursuant to this section must be approved by the court and shall be filed in the foreclosure proceedings. An agreement pursuant to this section does not constitute an equitable mortgage.

I.C.A. § 628.27

628.27. Redemption where property abandoned

The mortgagor and the mortgagee of any tract of real property consisting of less than ten acres in size may also agree and provide in the mortgage instrument that the court in a decree of foreclosure may find affirmatively that the tract has been abandoned by the owners and those persons personally liable under the mortgage at the time of such foreclosure, and that should the court so find, and if the mortgagee shall waive any rights to a deficiency judgment against the mortgagor or the mortgagor's successors in interest in the foreclosure action, then the period of redemption after foreclosure shall be reduced to sixty days. If the redemption period is so reduced, the mortgagor or the mortgagor's successors in interest or the owner shall have the exclusive right to redeem for the first thirty days after such sale and the times of redemption by creditors provided in [sections 628.5, 628.15 and 628.16](#) shall be reduced to forty days. Entry of appearance by pleading or docket entry by or on behalf of the mortgagor shall be a presumption that the property is not abandoned.

I.C.A. § 628.28

628.28. Redemption of property not used for agricultural or certain residential purposes

1. If real property is not used for agricultural purposes, as defined in section 535.13, and is not the residence of the debtor, or if it is the residence of the debtor but not a single-family or two-family dwelling, then the period of redemption after foreclosure is one hundred eighty days. For the first ninety days after the sale the right of redemption is exclusive to the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to one hundred thirty-five days. If a deficiency judgment has been waived the period of redemption is reduced to ninety days. For the first thirty days after the sale the redemption is exclusively the right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to sixty days.

2. If real property is not used for agricultural purposes, as defined in section 535.13, and is a single-family or two-family dwelling which is the residence of the debtor at the time of foreclosure but the court finds that after foreclosure the dwelling has ceased to be the residence of the debtor and if there are no junior creditors, the court shall order the period of redemption reduced to thirty days from the date of the court order. If there is a junior creditor, the court shall order the redemption period reduced to sixty days. For the first thirty days redemption is the exclusive right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to forty-five days.

I.C.A. § 654.1

654.1. Equitable proceedings

Except as provided in [section 654.18](#), a deed of trust or mortgage of real estate shall not be foreclosed in any other manner than by action in court by equitable proceedings.

I.C.A. § 654.1A

654.1A. Maintenance of mortgagor protections--discontinuation of occupation

For purposes of [sections 615.1, 615.3, 628.28, 654.2D, 654.20, 654.21, and 654.26](#), property shall be deemed the residence of and occupied by the mortgagor where occupation has ceased because of the effects of natural disaster, injury to the property not willfully caused by the mortgagor, or the mortgagor's national guard duty or federal active duty as those terms are defined in [section 29A.1](#).

I.C.A. § 654.2

654.2. Deeds of trust

Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages.

I.C.A. § 654.2A

654.2A. Agricultural land--notice, right to cure default

1. A creditor shall not initiate an action pursuant to this chapter to foreclose on a deed of trust or mortgage on agricultural land, as defined in [section 9H.1](#), until the creditor has complied with this section.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on agricultural land is in default may give the borrower notice of the alleged default, and, if the borrower has a right to cure the default, shall give the borrower the notice of right to cure provided in [section 654.2B](#). The notice is deemed received if sent by certified mail to the borrower.

3. The borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to two prior defaults on the obligation secured by the deed of trust or mortgage, or the borrower has voluntarily surrendered possession of the agricultural land and the creditor has accepted it in full satisfaction of any debt owing on the obligation in default. The borrower does not have a right to cure the default if the creditor has given the borrower a proper notice of right to cure with respect to a prior default within twelve months prior to the alleged default.

4. If the borrower has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, other than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until forty-five days after a proper notice of right to cure is given. The time period for a request for mediation pursuant to chapter 654A shall run concurrently with the period for the notice to cure under this section.

b. Until the expiration of forty-five days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, plus a delinquency charge of the scheduled annual interest rate plus five percent per annum for the period between the giving of the notice of right to cure and the tender, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure a default other than nonpayment of amounts due, which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage, except as provided in subsection 3.

6. This section does not prohibit a borrower from voluntarily surrendering possession of the agricultural land, and does not prohibit the creditor from enforcing the creditor's interest in the land at any time after compliance with this section.

I.C.A. § 654.2B

654.2B. Requirements of notice of right to cure

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor or other person to which payment is to be made, a brief identification of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of

the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor or a person acting on behalf of the creditor is entitled to proceed with initiating a foreclosure action or procedure. The failure of the notice of right to cure to comply with one or more provisions of this section is not a defense or claim in any action pursuant to this chapter and does not invalidate any procedure pursuant to chapter 655A, unless the person asserting the defense, claim, or invalidity proves that the person was substantially prejudiced by such failure.

I.C.A. § 654.2C

654.2C. Mediation notice--foreclosure on agricultural property

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in [section 654A.1](#), which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives a mediation release under [section 654A.11](#), or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

I.C.A. § 654.2D

654.2D. Nonagricultural land--notice, right to cure default

1. Except as provided in [section 654.2A](#), a creditor shall comply with this section before initiating an action pursuant to this chapter or initiating the procedure established pursuant to chapter 655A to foreclose on a deed of trust or mortgage.
2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the borrower a notice of right to cure as provided in [section 654.2B](#). A creditor gives the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence as defined in [section 537.1201, subsection 4](#).
3. The borrower has a right to cure the default within thirty days from the date the creditor gives the notice.
4. a. The creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until thirty days after a proper notice of right to cure is given.
b. Until the expiration of thirty days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, or the amount stated in the notice of right to cure, whichever is less, or by tendering any other performance necessary to cure a default which is described in the notice of right to cure.
5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage.
6. This section does not prohibit the creditor from enforcing the creditor's interest in the land at any time after the creditor has complied with this section and the borrower did not cure the alleged default.

7. A borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default.
8. This section does not apply if the creditor is an individual or individuals, or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.
9. An affidavit signed by an officer of the creditor that the creditor has complied with this section is deemed to be conclusive evidence of compliance by all persons other than the creditor and the mortgagor.
10. As used in this section, "creditor" includes a person acting on behalf of a creditor.

I.C.A. § 654.3

654.3. Venue

An action for the foreclosure of a mortgage of real property, or for the sale thereof under an encumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated.

I.C.A. § 654.4

654.4. Separate suits on note and mortgage

If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at the plaintiff's cost.

I.C.A. § 654.4A

654.4A. Service of process--in rem relief

In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action or nonjudicial foreclosure under [section 654.18](#) or chapter 655A against either a party or a person to be served with a notice pursuant to [section 654.15B](#), all of the following shall apply:

1. If the person to be served is a judgment creditor, service may be made by certified mail, with proof of delivery, to the judgment creditor's registered agent or to the judgment creditor at the judgment creditor's principal place of business in the state where the business is organized, as indicated by the records in the office of the secretary of state, or to the judgment creditor at the last address indicated in the case in which the judgment was entered.
2. Upon affidavit that service cannot be made on a judgment creditor either pursuant to subsection 1 or by personal service in this state, service may be made by certified mail, with proof of delivery, on the judgment creditor's attorney of record if that attorney is a practicing attorney in this state, along with a copy of this section, and a payment of ten dollars. The attorney shall forward the notice by ordinary mail to the judgment creditor's last known address but the attorney shall have no further duties under this section with respect to the notice.
3. An attorney who agrees to accept service on behalf of a judgment creditor may charge a reasonable fee, not to exceed ten dollars, for accepting service.
4. If a person, other than a governmental taxing unit, is an interested person with respect to a decedent's estate in probate, the person may be named generally as a person interested in the decedent's estate and service of process shall be made by personal service or certified mail, along with proof of delivery, on the attorney for the personal representative. If the estate is probated in

this state and a person has requested notice pursuant to [section 633.42](#), the mortgagee shall also serve that person or the person's attorney by ordinary mail at the address specified in the request for notice. A person so served may intervene as a named defendant as a matter of right.

5. If a defendant, other than a governmental taxing unit, is a person whose identity is not reasonably ascertainable, and the person has an interest in a decedent's estate not probated in this state, such person may be named generally as a person with an interest in the decedent's estate and service of process shall be made by publication unless the mortgagee has actual notice that the decedent's estate is probated in another state. A person so served may intervene as a named defendant as a matter of right.

I.C.A. § 654.4B

654.4B. Acceleration of indebtedness--notice of mortgage mediation assistance

1. Prior to commencing a foreclosure on the accelerated balance of a mortgage loan and after termination of any applicable cure period, including but not limited to those provided in [section 654.2A](#) or [654.2D](#), a creditor shall give the borrower a fourteen-day demand for payment of the accelerated balance to qualify for an award of attorney fees under [section 625.25](#) on the accelerated balance.

2. a. Prior to filing a petition under this chapter on a one-family or two-family dwelling that is the residence of the owner, the creditor shall inform the owner of the availability of counseling and mediation on a form as the attorney general may prescribe. The notice required by this section shall be mailed by ordinary mail to the owner along with the notice of acceleration or other initial communication from the attorney representing the creditor in the action, and shall also be served on the owner with the original notice and petition seeking foreclosure. If, following application by the owner or on its own motion, the court finds that the notice was not served on the owner as required by this subsection and that the owner desires counseling or mediation, the court shall grant to the owner a delay of the sheriff's sale or, in the event the sheriff's sale has occurred and the mortgagee or its affiliate was the winning bidder at the sheriff's sale, a delay of the recording of the sheriff's deed. In either case, the delay shall not exceed sixty days. If the affidavit of service for the original notice in the court file indicates that the notice required by this subsection was served on the owner, there shall be a rebuttable presumption that the notice was served as required by this subsection. The court may grant an application for a delay pursuant to this subsection ex parte only if the court file does not show service of the notice on the owner along with the original notice. Objection to the failure of the mortgagee to serve the notice is barred unless an application under this subsection is timely filed and is granted before the date of the sale or recording, respectively. If the court delays the sheriff's sale, the new sale date and time shall be announced orally by the sheriff at the time previously scheduled for sale, and the mortgagee need not republish and serve notice of the rescheduled sale.

b. This subsection is repealed July 1, 2013.

I.C.A. § 645.5

654.5. Judgment--sale and redemption

1. When a mortgage or deed of trust is foreclosed, the court shall do all of the following:

a. Render judgment for the entire amount found to be due.

b. Direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the judgment, with interest and costs.

c. Determine issues of title raised in the pleadings to establish the rights and priorities of the parties and persons served with notice pursuant to section 654.15B in the property subject to foreclosure as may be reasonably necessary to allow a purchaser at a sheriff's sale to obtain clear title.

2. A special execution shall issue under such conditions as the decree may prescribe, and the sale under the special execution is subject to redemption as in cases of sale under general execution unless the plaintiff has elected foreclosure without redemption under [section 654.20](#).

3. The clerk shall provide a copy of the decree by ordinary or electronic mail to all parties in the foreclosure proceeding and all persons served with notices under [section 654.15B](#).

I.C.A. § 654.6

654.6. Deficiency--general execution

If the mortgaged property does not sell for an amount which is sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise.

I.C.A. § 654.7

654.7. Overplus

If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor.

I.C.A. § 654.8

654.8. Junior encumbrancer entitled to assignment

At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying the holder the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to the person's. The person may then proceed with the foreclosure, or discontinue it, at the person's option.

I.C.A. § 654.9

654.9. Payment of other liens--rebate of interest

If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court must be made by the holder, or the holder's lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor.

I.C.A. § 654.9A

654.9A. Release of superior liens by bond

At any time prior to the court's decree, the plaintiff, or a person guaranteeing title of the plaintiff's mortgage, may post a bond with sureties to be approved by the clerk and apply to the court to release the claim against the property of any person claiming a lien superior to that of the plaintiff in the property subject to foreclosure. The bond shall be in an amount not less than twice the amount of the claim, and notice of the bond and the court's order of release shall be served on the claimant. Unless the claimant has appeared in the foreclosure action, the service shall be by personal service. Unless the claimant files an action on the bond within twelve months from

service of the notice, the claimant shall be barred from any further remedy. In a successful action on the bond, the court may award the claimant reasonable attorney fees. A guarantor filing such a bond shall be subrogated to any defenses which the plaintiff may have against the adverse claimant, including but not limited to a defense of lack of equity in the mortgaged property to secure the adverse claim in its proper priority.

I.C.A. § 654.10

654.10. Amount sold

As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed.

I.C.A. § 654.11

654.11. Foreclosure of title bond

In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file a petition asking the court to require the purchaser to perform the purchaser's contract, or to foreclose and sell the purchaser's interest in the property.

I.C.A. § 654.12

654.12. Vendee deemed mortgagor

The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and the vendee's rights may be foreclosed in a similar manner.

I.C.A. § 654.12A

654.12A. Priority of advances under mortgages

Subject to [section 572.18](#), if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage, up to the maximum amount of credit together with interest thereon, are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by this section for the prior recorded mortgage is as follows:

NOTICE: This mortgage secures credit in the amount of _____. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

However, the priority of a prior recorded mortgage under this section does not apply to loans or advances made after receipt of notice of foreclosure or action to enforce a subsequently recorded mortgage or other subsequently recorded or filed lien.

I.C.A. § 654.12B

654.12B. Priority of recorded purchase money mortgage lien

The lien created by a recorded purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising

either directly or indirectly by, through, or under the purchaser. A mortgage is a purchase money mortgage to the extent it is either:

1. Taken or retained by the seller of the real estate to secure all or part of its price, including all costs in connection with the purchase.
2. Taken by a lender who, by making an advance or incurring an obligation, provides funds to enable the purchaser to acquire rights in the real estate, including all costs in connection with the purchase, if the funds are in fact so used. Except when it is a refinancing of an existing purchase money mortgage between the same lender and purchaser and no new funds are advanced, a mortgage given to secure funds which are used to pay off another mortgage is not a purchase money mortgage.

If more than one purchase money mortgage exists, the first mortgage to be recorded has priority. In order to be entitled to the rights provided by this section, the mortgage must contain a recital that it is a purchase money mortgage. However, failure to include the recital in the mortgage shall not prevent a mortgage otherwise qualifying as a purchase money mortgage from being a purchase money mortgage for purposes other than this section. The rights in this section are in addition to, and the obligations are not in derogation of, all rights provided by common law.

I.C.A. § 654.13

654.13. Pledge of rents--priority

Whenever any real estate is encumbered by two or more real estate mortgages which in addition to the lien upon the real estate grant to the mortgagee the right to subject the rents, profits, avails and/or income from said real estate to the payment of the debt secured by such mortgage, the priority of the respective mortgagees under the provisions of their mortgages affecting the rents, profits, avails and/or incomes from the said real estate shall, as between such mortgagees, be in the same order as the priority of the lien of their respective mortgages on the real estate.

I.C.A. § 654.14

654.14. Preference in receivership--application of rents

In an action to foreclose a real estate mortgage, if a receiver is appointed to take charge of the real estate, preference shall be given to the owner or person in actual possession, subject to approval of the court, in leasing the mortgaged premises. If the real estate is agricultural land used for farming, as defined in [section 9H.1](#), the owner or person in actual possession shall be appointed as receiver without bond, provided that all parties agree to the appointment. The rents, profits, avails, and income derived from the real estate shall be applied as follows:

1. To the cost of receivership.
2. To the payment of taxes due or becoming due during said receivership.
3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court.
4. The balance shall be paid and distributed as determined by the court.

If the owner or person in actual possession of agricultural land as defined in [section 9H.1](#) is not afforded a right of first refusal in leasing the mortgaged premises by the receiver, the owner or person in actual possession has a cause of action against the receiver to recover either actual damages or a one thousand dollar penalty, and costs, including reasonable attorney's fees. The receiver shall deliver notice to the owner or person in actual possession or the attorney of the owner or person in actual possession, of an offer made to the receiver, the terms of the offer, and the name and address of the person making the offer. The delivery shall be made personally with

receipt returned or by certified or registered mail, with the proper postage on the envelope, addressed to the owner or person in actual possession or the attorney of the owner or person in actual possession. An offer shall be deemed to have been refused if the owner or person in actual possession or the attorney of the owner or person in actual possession does not respond within ten days following the date that the notice is mailed.

I.C.A. § 654.15

654.15. Continuance--moratorium

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner enters an appearance and files an answer admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests, the court may continue the foreclosure proceeding as follows:

a. If the default or breach of terms of the written instrument on which the action is based occurs on or before the first day of March of any year by reason of any of the causes specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

b. If the default or breach of terms of the written instrument occurs after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

c. Only one continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may grant a second continuance for a further period as the court deems just and equitable, not to exceed one year.

d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance on the buildings on the premises.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited on the instrument.

An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat,

hail, storm, or other climatic conditions or due to infestation of pests. The length of the continuance shall be determined by the court, but shall not exceed two years.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real estate, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The governor shall state in the declaration the types of real estate eligible for a moratorium continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of a type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real estate eligible for a moratorium, the owner may apply for a continuation of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. If the application is made in regard to real estate used for farming, the continuance shall terminate two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.

b. Only one continuance shall be granted the applicant for each written instrument or contract under each declaration.

c. The court shall appoint a receiver to take charge of the property and to rent the property. The applicant shall be given preference in the occupancy of the property. The receiver, who may be the applicant, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership, including the required interest on the written instrument and the costs of operation.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the principal due on the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

(1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.

(2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

I.C.A. § 654.15A

654.15A. Notice of sale to junior creditors

A junior creditor may file and serve on the judgment creditor a request for notice of the sheriff's sale. Such request for notice shall include a facsimile number or electronic mail address where the creditor shall be notified of the sale. At least ten days prior to the date of sale, the attorney for the junior creditor shall file proof of service of such request for notice. Upon motion filed within thirty days of the sale, the court may set aside a sale in which a junior creditor who requests notice is damaged by the failure of the sheriff or the judgment creditor to give notice pursuant to this section.

I.C.A. § 654.15B

654.15B. Right to intervene--notice

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:

NOTICE OF PENDING FORECLOSURE

To: (Name and address of creditor)

Date: (Enter date)

(Name of foreclosing party) has filed a foreclosure of mortgage against the property of (titleholder) located at (street address of property) which is legally described as (legal description). This foreclosure was filed as (Plaintiff v. Defendant), Case # (.), in the Iowa District Court for (.....) County and is intended to foreclose a mortgage dated (date of mortgage) and recorded on (date of recording) in the (county recorder's office). You have an apparent interest in the property because of an apparent judgment lien in (short caption of case, case number, court where judgment entered, and judgment date). If you desire to protect this interest, you have the right to intervene in the foreclosure action within thirty days of the service of notice by filing an intervention with the clerk of court in (.....) County. Unless you intervene in the foreclosure, the foreclosure may eliminate any interest you have in the property but will not otherwise affect your rights. If you have any questions about this notice, contact your attorney. Whether or not you intervene, the foreclosure may have certain tax consequences to you about which you should consult your tax advisor.

.....
Name, address, and telephone number of attorney representing (name of foreclosing party).

I.C.A. § 654.16

654.16. Separate redemption of homestead

If a sheriff's sale is ordered on agricultural land used for farming, as defined in [section 175.2](#), the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may

be any contiguous portion of forty acres or less of the real estate subject to the sheriff's sale. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If a homestead is designated, the court shall determine the fair market value of the designated homestead before the sheriff's sale. The court may consult with the county appraisers appointed pursuant to [section 450.24](#), or with one or more independent appraisers, to determine the fair market value of the designated homestead.

The mortgagor may redeem the designated homestead by tendering the lesser of either any amount separately bid for the designated homestead at the sheriff's sale pursuant to procedures set forth in chapter 628, or the fair market value, as determined pursuant to this section, of the designated homestead at any time within one year from the date of the sheriff's sale, pursuant to the procedures set forth in chapter 628.

I.C.A. § 654.16A

654.16A. Right of first refusal following recording of sheriff's deed to agricultural land

1. Not later than the time a sheriff's deed to agricultural land used for farming, as defined in [section 175.2](#), is recorded, the grantee recording the sheriff's deed shall notify the mortgagor of the mortgagor's right of first refusal. The grantee shall record the sheriff's deed within one year and sixty days from the date of the sheriff's sale. A copy of this section, titled "Notice of Right of First Refusal" is sufficient notice.

2. If, after a sheriff's deed is recorded, the grantee proposes to sell or otherwise dispose of the agricultural land, in a transaction other than a public auction, the grantee shall first offer the mortgagor the opportunity to repurchase the agricultural land on the same terms and at the same price that the grantee proposes to sell or dispose of the agricultural land. If the grantee seeks to sell or otherwise dispose of the agricultural land by public auction, the mortgagor must be given sixty days' notice of all of the following:

a. The date, time, place, and procedures of the auction sale.

b. Any minimum terms or limitations imposed upon the auction.

3. The grantee is not required to offer the mortgagor financing for the purchase of the agricultural land.

4. The mortgagor has ten business days after being given notice of the terms and price of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the agricultural land by submitting a binding offer to the grantee on the same terms as the proposed sale or other disposition, with closing to occur within thirty days after the offer unless otherwise agreed by the grantee. After the expiration of either the period for offer or the period for closing, without submission of an offer or a closing occurring, the grantee may sell or otherwise dispose of the agricultural land to any other person on the terms upon which it was offered to the mortgagor.

5. Notice of the mortgagor's right of first refusal, a proposed sale, auction, or other disposition, or the submission of a binding offer by the mortgagor, is considered given on the date that notice or offer is personally served on the other party or on the date that notice or offer is mailed to the other party's last known address by registered or certified mail, return receipt requested. The right of first refusal provided in this section is not assignable, but may be exercised by the mortgagor's successor in interest, receiver, personal representative, executor, or heir only in case of bankruptcy, receivership, or death of the mortgagor.

I.C.A. § 654.17

654.17. Recision of foreclosure

1. At any time prior to the recording of the sheriff's deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff's sale, may rescind the foreclosure action by filing a notice of recision with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, if the original loan documents are contained in the court file, the mortgagee shall pay a fee of twenty-five dollars to the clerk of the district court. Upon the payment of the fee, the clerk shall make copies of the original loan documents for the court file, and return the original loan documents to the mortgagee.

2. Upon the filing of the notice of recision, the mortgage loan shall be enforceable according to the original terms of the mortgage loan and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. Except as otherwise provided in this section, the filing of a recision shall operate as a setting aside of the decree of foreclosure and a dismissal of the foreclosure without prejudice, with costs assessed against the plaintiff. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise and the mortgagee shall be permanently barred from a deficiency judgment if the judgment rescinded was subject to the provisions of [section 615.1](#). The mortgagee may charge the mortgagor for the costs, including reasonable attorney fees, of foreclosure and recision if agreed to in writing by the mortgagor.

I.C.A. § 654.17A

654.17A. Sale free of liens

At any time during the pendency of the foreclosure, the plaintiff may apply to the court for an order approving an offer for a commercially reasonable sale of the property free of the claims of the parties to the action and other persons served with notice pursuant to [section 654.15B](#). A copy of the offer shall be attached to the application and the application shall contain a written consent to the proposed sale by all equitable titleholders who have not abandoned the property. The court may grant the motion unless a party in interest objects in writing during such time as the court may prescribe. A person filing an objection with a claim junior to the plaintiff shall either apply for assignment of senior claims pursuant to [section 654.8](#), otherwise provide adequate protection to senior creditors, or establish that a sheriff's sale is substantially more likely than the proposed sale to provide the creditor with more favorable satisfaction of its lien. Pending resolution of the rights of the parties and persons served with notice pursuant to [section 654.15B](#), the court shall place the net proceeds of the sale in escrow after payment of reasonable closing costs. The rights of such persons to the escrowed funds shall be determined in the same manner as their rights to the property that was sold.

I.C.A. § 654.17B

654.17B. Divestment of junior liens pursuant to loan modification--repeal

1. The foreclosing mortgagee and the mortgagor, including any successor in interest of the original mortgagor, of a nonagricultural one-family or two-family dwelling occupied as a residence by the mortgagor may agree in writing to a modification of the mortgage obligation to allow the mortgagor to continue to reside on the property. If such a modification provides for a reduction of at least ten percent in the net present value of the indebtedness owing to the mortgagee, the foreclosing mortgagee and the mortgagor may move that the court divest any junior liens against the property. If the court approves divestment, the court shall order that the

junior lienholder be served personally with copies of the loan modification agreement, a verified current balance of the loan as modified, and the court's order that the junior lienholder's interest in the property be divested unless the junior lienholder, within forty-five days of service, either acts pursuant to [section 654.8](#) to obtain an assignment of the mortgagee's rights as modified or moves to quash the proposed divestment by establishing that the value of the property exceeds the amount of the mortgage debt prior to its modification. Such divestment shall prohibit the junior lienholder from any subsequent action to enforce the junior lienholder's debt against the mortgaged property, but, subject to the provisions of chapter 615, shall not otherwise prejudice any personal right of action the junior lienholder may have to proceed against the mortgagor's other assets.

I.C.A. § 654.18

654.18. Alternative nonjudicial voluntary foreclosure procedure

1. Upon the mutual written agreement of the mortgagor and mortgagee, a real estate mortgage may be foreclosed pursuant to this section by doing all of the following:

a. The mortgagor shall convey to the mortgagee all interest in the real property subject to the mortgage.

b. The mortgagee shall accept the mortgagor's conveyance and waive any rights to a deficiency or other claim against the mortgagor arising from the mortgage.

c. The mortgagee shall have immediate access to the real property for the purposes of maintaining and protecting the property.

d. The mortgagor and mortgagee shall file a jointly executed document with the county recorder in the county where the real property is located stating that the mortgagor and mortgagee have elected to follow the alternative voluntary foreclosure procedures pursuant to this section.

e. (1) The mortgagee shall send by certified mail a notice of the election to all junior lienholders as of the date of the conveyance under paragraph "a", stating that the junior lienholders have thirty days from the date of mailing to exercise any rights of redemption. The notice may also be given in the manner prescribed in [section 656.3](#) in which case the junior lienholders have thirty days from the completion of publication to exercise the rights of redemption.

(2) In addition to any other form of service authorized by law, service of process in an alternative nonjudicial voluntary foreclosure procedure filed pursuant to this section where in rem relief is the only relief requested shall be served in the manner provided in [section 654.4A](#).

f. At the time the mortgagor signs the written agreement pursuant to this subsection, the mortgagee shall furnish the mortgagor a completed form in duplicate, captioned "Disclosure and Notice of Cancellation". The form shall be attached to the written agreement, shall be in ten point boldface type and shall be in the following form:

DISCLOSURE AND NOTICE OF CANCELLATION

(enter date of transaction)

Under a forced foreclosure Iowa law requires that you have the right to reclaim your property within one year of the date of the foreclosure and that you may continue to occupy your property during that time. If you agree to a voluntary foreclosure under this procedure you will be giving up your right to reclaim or occupy your property.

Under a forced foreclosure, if your mortgage lender does not receive enough money to cover what you owe when the property is sold, you will still be required to pay the difference. If your mortgage lender receives more money than you owe, the difference must be paid to you. If you

agree to a voluntary foreclosure under this procedure you will not have to pay the amount of your debt not covered by the sale of your property but you also will not be paid any extra money, if any, over the amount you owe.

NOTE: There may be other advantages and disadvantages, including an effect on your income tax liability, to you depending on whether you agree or do not agree to a voluntary foreclosure. If you have any questions or doubts, you are advised to discuss them with your mortgage lender or an attorney.

You may cancel this transaction, without penalty or obligation, within five business days from the above date.

This transaction is entirely voluntary. You cannot be required to sign the attached foreclosure agreement.

This voluntary foreclosure agreement will become final unless you sign and deliver or mail this notice of cancellation to _____

_____ (name of mortgagee) before midnight of _____ (enter proper date).

I HEREBY CANCEL THIS TRANSACTION.

DATE

SIGNATURE

2. A junior lienholder may redeem the real property pursuant to [section 628.29](#). If a junior lienholder fails to redeem its lien as provided in subsection 1, its lien shall be removed from the property.

3. Until the completion of foreclosure pursuant to this section, the mortgagee shall hold the real property subject to liens of record at the time of the conveyance by the mortgagor. However, the lien of the mortgagee shall remain prior to liens which were junior to the mortgage at the time of conveyance by the mortgagor to the mortgagee and may be foreclosed as provided otherwise by law.

4. A mortgagee who agrees to a foreclosure pursuant to this section shall not report to a credit bureau that the mortgagor is delinquent on the mortgage. However, the mortgagee may report that this foreclosure procedure was used.

I.C.A. § 654.19

654.19. Deed in lieu of foreclosure--agricultural land

In lieu of a foreclosure action in court due to default on a recorded mortgage or deed of trust of real property, if the subject property is agricultural land used for farming, as defined in [section 9H.1](#), the mortgagee and mortgagor may enter into an agreement in which the mortgagor agrees to transfer the agricultural land to the mortgagee in satisfaction of all or part of the mortgage obligation as agreed upon by the parties. The agreement may grant the mortgagor a right to purchase the agricultural land for a period not to exceed five years, and may entitle the mortgagor to lease the agricultural land. The agreement shall be recorded with the deed transferring title to the mortgagee. A transfer of title and agreement pursuant to this section does not constitute an equitable mortgage.

I.C.A. § 654.20

654.20. Foreclosure without redemption--nonagricultural land

If the mortgaged property is not used for an agricultural purpose as defined in [section 535.13](#), the plaintiff in an action to foreclose a real estate mortgage may include in the petition an election

for foreclosure without redemption. The election is effective only if the first page of the petition contains the following notice in capital letters of the same type or print size as the rest of the petition:

NOTICE

THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS (or SIX MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

If the plaintiff has not included in the petition a waiver of deficiency judgment, then the notice shall include the following:

IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE MORTGAGE DEBT AND COSTS.

IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN DEMAND TO DELAY THE SALE.

If the election for foreclosure without redemption is made, then [sections 654.21 through 654.26](#) apply.

I.C.A. § 654.20A

654.20A. Rights reserved

A mortgage or deed of trust shall not contain the notice under [section 654.20](#).

I.C.A. § 654.21

654.21. Demand for delay of sale

At any time prior to entry of judgment, the mortgagor may file a demand for delay of sale. If the demand is filed, the sale shall be held promptly after the expiration of two months from entry of judgment. However, if the demand is filed and the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, the sale shall be held promptly after the expiration of twelve months, or six months if the petition includes a waiver of deficiency judgment, from entry of judgment. If the demand is filed, the mortgagor and mortgagee subsequently may file a stipulation that the sale may be held promptly after the stipulation is

filed and that the mortgagee waives the right to entry of a deficiency judgment. If the stipulation is filed, the sale shall be held promptly after the filing. At any time prior to judgment, the mortgagor may pay the plaintiff the amount claimed in the petition and, if paid, the foreclosure action shall be dismissed. At any time after judgment and before the sale, the mortgagor may pay the plaintiff the amount of the judgment and, if paid, the judgment shall be satisfied of record and the sale shall not be held.

I.C.A. § 654.22

654.22. No demand for delay of sale

If the mortgagor does not file a demand for delay of sale, the sale shall be held promptly after entry of judgment.

I.C.A. § 654.23

654.23. No redemption rights after sale

The mortgagor has no right to redeem after sale. Junior lienholders have no right to redeem after sale. The mortgagor or a junior lienholder may purchase at the sale and, if so, acquire the same title as would any other purchaser. If the mortgagor at the sale bids an amount equal to the judgment, the property shall be sold to the mortgagor even though other persons may bid an amount which is more than the judgment. If the mortgagor purchases at the sale, the liens of junior lienholders shall not be extinguished. If a person other than the mortgagor purchases at the sale, the liens of junior lienholders are extinguished.

I.C.A. § 654.24

654.24. Deed and possession

The purchaser at the sale is entitled to an immediate deed and immediate possession.

I.C.A. § 654.25

654.25. Application of other statutes

If the plaintiff has elected foreclosure without redemption, chapter 628 does not apply. A provision in a mortgage permitted by [section 628.26](#) or [628.27](#) shall not be construed as an agreement by the mortgagee not to elect foreclosure without redemption. The election may be made in any petition filed on or after June 4, 1987. The election for foreclosure without redemption is not a waiver of the plaintiff's rights under [section 654.6](#) except as provided in [section 654.26](#).

I.C.A. § 654.26

654.26. No deficiency judgment in certain cases

If the plaintiff has elected foreclosure without redemption, the plaintiff may include in the petition a waiver of deficiency judgment. If the plaintiff has elected foreclosure without redemption and does not include in the petition a waiver of deficiency judgment, if the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, and if the mortgagor does not file a demand for delay of sale under [section 654.21](#), then the plaintiff shall not be entitled to the entry of a deficiency judgment under [section 654.6](#).

I.C.A. § 655A.1

655A.1. Title

This chapter shall be known as the “Nonjudicial Foreclosure of Nonagricultural Mortgages”.

I.C.A. § 655A.2

655A.2. Conditions prescribed

Except as provided in [section 655A.9](#), a mortgage may be foreclosed, at the option of the mortgagee, as provided in this chapter.

I.C.A. § 655A.3

655A.3. Notice

1. a. The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

(1) Reasonably identify by a document reference number the mortgage and accurately describe the real estate covered.

(2) Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

(3) State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to [section 655A.6](#) and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

(4) Specify a postal or electronic mail address where rejection of the notice may be served.

b. The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED IN [SECTION 655A.4](#). IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. The mortgagee may file a written notice required in subsection 1 together with proof of service on the mortgagor with the recorder of the county where the mortgaged property is located. Such a filing shall have the same force and effect on third parties as an indexed notation entered by the clerk of the district court pursuant to [section 617.10](#), commencing from the filing of proof of service on the mortgagors and terminating on the filing of a rejection pursuant to [section 655A.6](#), an affidavit of completion pursuant to [section 655A.7](#), or the expiration of ninety days from completion of service on the mortgagors, whichever occurs first.

4. As used in this chapter, “mortgagee” and “mortgagor” include a successor in interest.

I.C.A. § 655A.4

655A.4. Service

Notice under this chapter shall be served as provided in the rules of civil procedure for service of original notice or as provided in [section 654.4A](#). Rejection of notice under this chapter shall be served by ordinary or electronic mail addressed as provided in the notice, or if no address is provided, to the last address of the mortgagee known to the mortgagor.

I.C.A. § 655A.5

655A.5. Compliance with notice

If the mortgagor or a junior lienholder performs, within thirty days of completed service of notice, the breached terms specified in the notice, then the right to foreclose for the breach is terminated.

I.C.A. § 655A.6

655A.6. Rejection of notice

If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to [section 655A.3](#), files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying the notice which is rejected together with proofs of service required under [section 655A.4](#) that the rejection has been served on the mortgagee, the notice served upon the mortgagor pursuant to [section 655A.3](#) is of no force or effect.

I.C.A. § 655A.7

655A.7. Proof and record of service

If the terms and conditions as to which there is default are not performed within the thirty days, the party serving the notice or causing it to be served shall file for record in the office of the county recorder a copy of the notice with proofs of service required under [section 655A.4](#) attached or endorsed on it and, in case of service by publication, a personal affidavit that personal service could not be made within this state, and when those documents are filed and recorded, the record is constructive notice to all parties of the due foreclosure of the mortgage.

I.C.A. § 655A.8

655A.8. Effect of foreclosure--reopening

Upon completion of the filings required under [section 655A.7](#) and if no rejection of notice has been filed pursuant to [section 655A.6](#), then without further act or deed:

1. The mortgagee acquires and succeeds to all interest of the mortgagor in the real estate.
2. All liens which are inferior to the lien of the foreclosed mortgage are extinguished.
3. The indebtedness secured by the foreclosed mortgage is extinguished.
4. If, after completion of the filings required under [section 655A.7](#), it appears that a junior lienholder was not properly served with a notice pursuant to [section 655A.3](#), the mortgagee may serve the lienholder with an amended notice specifying the provisions of the mortgage currently in default. Unless, within thirty days, the junior lienholder performs pursuant to [section 655A.5](#), the mortgagee may file a supplemental affidavit indicating service and nonperformance to extinguish the lien.

5. A foreclosure under this chapter shall not bar a mortgagee or its successor in interest from action under chapter 654 to resolve matters which have not been resolved under this chapter.

I.C.A. § 655A.9

655A.9. Application of chapter

This chapter does not apply to real estate used for an agricultural purpose as defined in [section 535.13](#), or to a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by a legal or equitable titleholder.

KANSAS

K.S.A. 60-1301

60-1301. Appointment

A justice of the supreme court, a judge of the court of appeals or a district judge, or in the district judge's absence from the county a district magistrate judge, shall have authority to appoint a receiver in conformity with the provisions of [K.S.A. 60-1302](#) and [60-1303](#), and amendments thereto, whose duty it shall be to keep, preserve, and manage all property and protect any business or business interest entrusted to the receiver pending the determination of any proceeding in which such property or interest may be affected by the final judgment. 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.

K.S.A. 60-1302

60-1302. Oath and bond

The receiver shall before entering upon his or her duties, (1) be sworn to perform them faithfully, and (2) execute a bond with sufficient sureties to such persons on such conditions and in such sum as the judge shall direct. Additional bond may be required or the bond may be reduced by the court at any time.

K.S.A. 60-1303

60-1303. Powers

The receiver shall perform such acts respecting the property or business as the judge may authorize.

K.S.A. 60-1304

60-1304. Petition for appointment; specifications; notice; bond; application to nonresidents

A receiver shall not be appointed unless: (a) The petition or application for appointment specifies, to the extent known to the petitioner or applicant, the general character and probable value of the property, business or business interest for which the appointment is sought, and, if real property is involved, the estimated annual income therefrom; (b) notice and an opportunity to be heard is given to the interested parties, including any person or persons known to be in possession of all or any part of such property, business or business interest, unless the judge shall, after the introduction of evidence and a record of the proceeding is made, make a finding that immediate and irreparable injury is likely to result, and shall set forth in the order the probable nature of such immediate and irreparable injury. The judge may also require the petitioner or applicant to execute a bond, on such terms as the judge may direct, which bond shall not be a substitute for or in lieu of the bond of the receiver required in [K.S.A. 60-1302](#). This section shall not apply where the defendant is a nonresident or a foreign corporation not authorized to do business in this state.

K.S.A. 60-1305

60-1305. Appeal

An aggrieved party may, within 14 days, appeal from an order appointing or refusing to appoint a receiver without awaiting final determination of the proceeding. 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.

K.S.A. 60-711

60-711. Appointment of receiver

The judge may appoint a receiver in aid of attachment subject to the provisions of article 13 of this chapter.

K.S.A. 58-2343

58-2343. Assignment of rents of real property; lien; action upon default

(a) As used in this section:

(1) "Assignment instrument" means any mortgage, deed of trust, or other instrument or agreement by which a borrower assigns, transfers, pledges, or otherwise grants a lien upon or encumbers its rights to rents of real property therein described to or for the benefit of a lender as security for the repayment of any indebtedness or the performance of any obligations.

(2) "Borrower" means any mortgagor, deed of trust grantor, assignor, or debtor of any lender.

(3) "Lender" means any mortgagee, deed of trust beneficiary, assignee, or creditor, or its assigns, holding an assignment instrument.

(4) "Rents" includes the rents, income, proceeds, profits, royalties and other sums which (A) are derived under present and future leases, licenses, contracts and other agreements for the use or possession of real property and (B) are either in the possession or control of the borrower or are due and unpaid or are to become due and payable.

(b) The lien of an assignment instrument shall be a good, valid and enforceable lien on the rents from the real property therein described. Such lien shall be valid and binding against, unavoidable by and fully perfected as to the borrower and all subsequent purchasers, mortgagees, lien creditors, other lienholders and other persons for all purposes from the time of filing the assignment instrument or an affidavit of assignment of rents signed by the borrower for record in accordance with K.S.A. 58-2221 and amendments thereto, with a priority dating from the time of such filing, without any necessity for the lender to take possession or control of such rents or the property from which such rents are derived, to take any action tantamount to the taking of such possession or control, or to take other action whatsoever.

(c) Upon default by a borrower under the terms of an assignment instrument, the lender shall be entitled to enforce the assignment instrument in accordance with its terms and applicable law, and may apply to the district court having jurisdiction for appropriate relief to gain possession and control of the rents in enforcement of the assignment instrument. Upon such application, the court shall enter such orders and take such actions as appear necessary to collect, protect and preserve the rents and protect and preserve the lender's interest therein pending final disposition of an action upon the obligations secured by the assignment instrument.

(d) Any tenant who, upon due notice from the lender, makes rent payments to the lender in accordance with the terms of the assignment instrument shall be given credit for such payment as if the payments had been made to the borrower, but nothing herein shall affect the other rights and obligations of the borrower or the tenant as to one another.

KENTUCKY

KRS § 425.600

425.600 Appointment of receiver; appeal from order appointing or refusing to appoint; powers of receiver

(1) On the motion of any party to an action who shows that he has, or probably has, a right to, a lien upon, or an interest in, any property or fund, the right to which is involved in the action, and that the property or fund is in danger of being lost, removed or materially injured, the court may appoint a receiver, or order the master commissioner to take charge of the property or fund during the pendency of the action, and may order and coerce the delivery of it to him. The order of a court appointing or refusing to appoint a receiver, shall be deemed a final order for the purpose of an appeal; Provided, that such order shall not be superseded.

(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.

(3) Any income accruing during the pendency of proceedings under this section shall follow the property upon final disposition of the case.

KRS § 31A.080

31A.080 Receivers; persons not to be appointed receivers

- (1) Receivers, except as provided in subsection (2) of this section, may be appointed under the same terms and conditions as a master commissioner.
- (2) Except for personal representatives, guardians, curators and committees for persons of unsound mind, neither a party to an action, nor his attorney, nor any person interested therein, shall be appointed as a receiver unless by agreement of the parties.

KRS § 381.420

381.420 Waste committed while action pending; receiver; injunction

If the tenant or person in possession of any land commits or is about to commit any waste thereon, pending an action to recover or charge such land, the court in which the action is pending may order a receiver to take possession of the land, or may stay the committing of waste by injunction or restraining order.

LOUISIANA

LSA-R.S. 9:5136

§ 5136. Designation in mortgage or other instrument of keeper of property

The parties to a mortgage of either immovable property or movable property, or both, or the parties to a security agreement under Chapter 9 of the Louisiana Commercial Laws (R.S. 10:9-101, et seq.), may designate a keeper of the property to be appointed pursuant to R.S. 9:5137 by expressly naming or identifying in the mortgage or security agreement the person who is to serve as keeper or by describing the method by which he is to be selected. The parties may designate the mortgagee, or secured party, or his agent as the keeper or may permit the mortgagee or secured party to name the keeper at the time the seizure is effected. If the designation of the keeper by the parties to the mortgage or security agreement is not made in the original instrument, it may be made by any other instrument executed by them, either concurrently with or subsequent to the act of mortgage or security agreement, which in the case of a mortgage on immovable property shall be by an instrument duly acknowledged by the parties in the presence of a notary public and two witnesses.

LSA-R.S. 9:5137

§ 5137. Appointment of person designated by parties

A. If any immovable or any movable property, or both immovable and movable property, affected by a mortgage is seized as an incident to an action for the recognition or the enforcement of the mortgage, whether by executory process, writ of fieri facias, sequestration, or otherwise, the court issuing the order under which the seizure is to be effected shall, if such order is petitioned for by the seizing creditor, direct the sheriff or other officer making the seizure to appoint as keeper of the seized property such person as the parties may have designated as herein provided. The designation of a keeper of the property in accordance with the provisions of R.S. 9:5136 is for the benefit of the seizing creditor, but such designation shall not be deemed to require the seizing creditor to provoke the appointment of any such keeper.

B. If the parties have not designated a keeper of the property in accordance with the provisions of R.S. 9:5136, and if the sheriff or other officer making the seizure fails, refuses, or declines to operate or administer the seized property or for any reason wishes to have the court appoint a keeper, then upon application of either the seizing creditor, the mortgagor, or the sheriff and in a summary proceeding, with notice to the mortgagor, the mortgagee, and the sheriff or other officer making the seizure if they are not party to such application, the court before whom the proceedings are pending shall direct the sheriff or other officer making the seizure to appoint as keeper of the property a person whom the court designates.

LSA-R.S. 9:5138

§ 5138. Powers, duties, and compensation

A. The keeper or receiver shall perform his duties as a prudent administrator, and neither the keeper nor the seizing creditor shall be liable to the mortgagor or the owner of the seized property or any other person for any financial or pecuniary loss or damage claimed to have been suffered by the mortgagor or owner of the seized property or any other person by reason of the administration or management of the property by the keeper or receiver acting as a prudent administrator. A keeper appointed under the provisions of R.S. 9:5136 through 5140.2 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.

B. All revenues or other amounts received by the keeper during his administration first shall be applied to the costs and expenses incurred by him in the administration or preservation of the property, including meeting any obligations the owner might have to provide services, amenities, or other obligations as provided in the prior recorded existing leases of the tenants or lessees of the property, and any balance shall be applied to the debt secured by the mortgage.

C. The keeper shall render an accounting of his administration at such time or times as the court before whom the proceedings are pending may direct, and all costs and expenses necessarily incurred by him in the course of his administration shall be taxed as a part of the costs of the proceedings to the extent they have not been satisfied out of revenues previously received by the keeper. Costs and expenses of administration shall not include any compensation to a keeper appointed under R.S. 9:5136 through 5140.2 for his services, unless he was particularly identified by the parties in the act of mortgage and the manner of determining such compensation is therein agreed to, or unless the keeper was appointed by the court pursuant to the provisions of R.S. 9:5137(B).

MAINE

Maine Rules of Civil Procedure, Rule 41

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) *By Plaintiff; by Stipulation.* Subject to the provisions of Rule 23(e) and of any statute, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action; provided, however, that no action wherein a receiver has been appointed shall be dismissed except by order of the court. A dismissal under this paragraph may be as to one or more, but fewer than all claims, but not as to fewer than all of the plaintiffs or defendants. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state or any other state or the United States an action based on or including the same claim.

Maine Rules of Civil Procedure, Rule 62

Rule 62. Stay of Proceedings to Enforce A Judgment

(a) Automatic Stay, Exceptions--Injunctions and Receiverships.

Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 21 days after its entry or until the time for appeal from the judgment as extended by the rules governing appeals has expired. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action or an order relating to the care, custody and support of minor children or to the separate support or personal liberty of a person or for the protection of a person from abuse or harassment shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (d) of this rule govern the suspending, modifying, restoring or granting of an injunction during the pendency of an appeal.

M.R.Civ.P., Rule 66

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with Montana statutes and the historical practice in Montana courts or local rule. An action in which a receiver has been appointed may be dismissed only by court order.

13-B M.R.S.A. § 1105

§ 1105. Dissolution pursuant to court order

Courts of equity have full power to decree the dissolution of, and to liquidate the assets and affairs of, a corporation:

1. Action by member or director. In an action by a member or director when it is made to appear:

A. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights;

B. That the acts of the directors or those in control of the corporation are illegal or fraudulent;
C. That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

D. That the corporate assets are being misapplied or wasted; or

E. That the corporation is unable to carry out its purposes;

2. Action by creditor of corporation. In an action by a creditor of the corporation:

A. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

B. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

2-A. Action by Attorney General regarding public benefit corporation. In an action brought to court by the Attorney General relating to a public benefit corporation, if it is established that:

A. The corporation obtained its articles of incorporation through fraud;

B. The corporation has exceeded or abused the authority conferred upon it by law;

C. The assets of the corporation are being misapplied or wasted; or

D. The corporation is no longer able to carry out its purposes;

3. Complaint. Upon complaint by a corporation to have its dissolution continued under the supervision of the court; and

4. Liquidation of affairs precedes entry of decree. When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

5. Deleted. Laws 2001, c. 550, § C-24.

A proceeding under this section must be brought in the county in which the registered office or the principal office of the corporation is situated. It is not necessary to make directors or members parties to such an action or proceeding unless relief is sought against them personally.

13-B M.R.S.A. § 1106

§ 1106. Procedure in liquidation of corporation by court

1. Court's power. In proceedings to liquidate the assets and activities of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the activities of the corporation until a full hearing can be had.

2. Court to appoint liquidating receiver. After a hearing and upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

3. Assets of corporation. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as the court may order, after taking into account the following standards.

A. All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall, to the extent that unencumbered assets are available therefor, be paid first toward the payment of costs and expenses of court proceeding, and then toward other liabilities and obligations of the corporation.

B. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements.

C. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct.

D. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

E. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

4. Court to direct payments. The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

5. Receiver to have power to sue and defend. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

6. Receiver to be a citizen of the United States. A receiver shall in all cases be a citizen of the United States and shall in all cases give such bond as the court may direct with such sureties as the court may require.

13-C M.R.S.A. § 1430

§ 1430. Grounds for judicial dissolution

A corporation may be dissolved by a judicial dissolution in a proceeding by:

1. Attorney General. The Attorney General if it is established that:

A. The corporation obtained its articles of incorporation through fraud; or

B. The corporation has continued to exceed or abuse the authority conferred upon it by law;

2. Shareholder. A shareholder if it is established that:

A. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and, because of the deadlock, irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;

B. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

C. The shareholders are so divided regarding the management of the business and affairs of the corporation that the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;

D. The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired;

E. The corporate assets are being misapplied or wasted; or

F. A shareholder of the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve;

3. Creditor. A creditor if it is established that:

A. The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied and the corporation is insolvent; or

B. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

4. Corporation. The corporation to have its voluntary dissolution continued under court supervision.

13-C M.R.S.A. § 1432

§ 1432. Receivership

1. Appoint receivers. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to manage and to wind up and liquidate the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has jurisdiction over the corporation and all of its property wherever located.

2. Post bond. A court under subsection 1 may appoint an individual or a domestic or foreign corporation authorized to transact business in this State as a receiver. The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

3. Powers; duties. A court shall describe the powers and duties of the receiver in the court's appointing order under subsection 1, which may be amended from time to time. The receiver may, in addition to other specified powers:

A. Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;

B. Sue and defend in the receiver's own name as receiver of the corporation in all courts of this State; and

C. Exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. Compensation; expenses. A court from time to time during a receivership under this section may order compensation paid and expenses paid or reimbursed to the receiver and the receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

31 M.R.S.A. § 1054

§ 1054. Partner's transferable interest subject to charging order

1. Charging order; interest of judgment debtor. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require.

2. Charging order; lien. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. Redemption of charged interest. At any time before foreclosure, an interest charged may be redeemed:

A. By the judgment debtor;

B. With property other than partnership property, by one or more of the other partners; or

C. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. Exemptions apply. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. Exclusive remedy for judgment creditor. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

31 M.R.S.A. § 1383

§ 1383. Rights of judgment creditor of partner or transferee

1. Court order charging transferable interest; rights of transferee. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

2. Charging order a lien; foreclosure; rights of transferee. A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. Redemption before foreclosure. At any time before foreclosure, an interest charged may be redeemed:

A. By the judgment debtor;

B. With property other than limited partnership property, by one or more of the other partners; or

C. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

4. Exemption laws applicable. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

5. Exclusive remedy. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

33 M.R.S.A. § 581

§ 581. Foreclosure

All sums assessed by the association of unit owners, but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on such unit prior to all other liens, except only tax liens on the unit in favor of any assessing unit and special district, including any state and federal tax liens, and all sums unpaid on mortgages of record. Such lien may be claimed 60 days after the due date of the assessment. It shall be signed by the manager or one of the members of the board of directors and shall be perfected by filing it in the registry of deeds of the county in which the unit lies, and by leaving a true and attested copy thereof with the unit owner against whom such lien is claimed or at his usual place of abode, or, if such unit owner resides outside the municipality in which the unit lies, by mailing such copy to him at the place where he resides. Such lien shall be limited and discharged in accordance with the general statutes. Such lien may be foreclosed by action by the manager or board of directors, acting on behalf of the unit owners, in like manner as a mortgage of real property including reimbursement for costs and reasonable attorneys' fees. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Where a mortgagee or a purchaser at a foreclosure sale obtains title to a unit, such acquirer of title, his heirs, successors and assigns, shall not be liable for the entire unpaid share of the common expenses or assessments by the association of unit owners chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer, but such expenses or assessments shall become common expenses collectible from all of the unit owners including such acquirer, his heirs, successors and assigns.

MARYLAND

MD Rules, Rule 13-101

RULE 13-101. DEFINITIONS

In this Title the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) **Assignee.** “Assignee” means a person to whom a debtor has made a general assignment of property in trust for the benefit of creditors.

(b) **Court.** “Court” means the court that has appointed a receiver or that has assumed jurisdiction over the estate of an assignee.

(c) **Debtor.** “Debtor” means a person who has made a general assignment to an assignee or for whom a receiver has been appointed.

(d) **Estate.** “Estate” means property assigned to an assignee or administered by a receiver.

(e) **Receiver.** “Receiver” means a person, other than an assignee, appointed by a court to take charge of an estate that is within the scope of the rules in this Title.

MD Rules, Rule 13-102

RULE 13-102. SCOPE

(a) **Generally.** Except as provided in section (b), the rules in this Title apply in the circuit court to the estate of:

- (1) an assignee;
- (2) a receiver appointed under the general equitable power of a court to take charge of an estate;
- (3) a receiver appointed under any statutory provision that specifically provides that these rules apply to the proceeding; and
- (4) any other statutory receiver to the extent that (A) the rules in this Chapter are not inconsistent with the statutory provisions authorizing the appointment of the receiver, and (B) the court orders that the rules apply.

(b) **No Application.** The rules in this Title do not apply to the estate of:

- (1) a receiver appointed pursuant to the terms of a mortgage or deed of trust pending foreclosure who takes charge of only the property subject to that mortgage or deed of trust;
- (2) a receiver appointed pursuant to the terms of a security agreement who takes charge of only the property subject to that agreement; or
- (3) a person appointed for purposes of enforcement of health, housing, fire, building, electric, licenses and permits, plumbing, animal control, or zoning codes or for the purpose of abating a public nuisance.

MD Rules, Rule 13-103

RULE 13-103. APPLICABILITY OF OTHER RULES

(a) **Discovery.** A receiver, an assignee, or any person in a contested matter may obtain discovery pursuant to Title 2, Chapter 400 of these Rules. Any other person having an interest in the estate may obtain discovery only upon order of court.

(b) **Title 2 Rules.** The Title 2 rules apply to proceedings under this Title except to the extent that a rule in this Title is inconsistent with a particular rule in Title 2 or the court determines that the application of a rule in Title 2 would be inappropriate.

(c) **Other Rules.** Except as otherwise specifically provided in this Title, the procedures for making a sale of property of the estate shall be governed by Title 14, Chapter 300 of these Rules.

MD Rules, Rule 13-104

RULE 13-104. SERVICE

Unless otherwise specifically provided by the rules in this Title or ordered by the court, no paper required or permitted to be filed by a rule in this Title need be served on any person.

MD Rules, Rule 13-105

RULE 13-105. ELIGIBILITY TO SERVE AS RECEIVER, ASSIGNEE, OR PROFESSIONAL

(a) Generally. Except as otherwise provided by law or by section (b) of this Rule, a person may not serve as a receiver or assignee, or as an attorney, accountant, appraiser, auctioneer, or other professional representing or assisting the receiver or assignee, if the person:

- (1) is a creditor or a holder of an equity security of the debtor;
- (2) is or was an investment banker for any outstanding security of the debtor;
- (3) has been, within three years before the date of the appointment of a receiver or the assumption of jurisdiction over the estate of an assignee, an investment banker for a security of the debtor, or an attorney for such an investment banker, in connection with the offer, sale, or issuance of a security of the debtor;
- (4) is or was, within two years before the date of the appointment of a receiver or the assumption of jurisdiction over the estate of an assignee, a director, an officer, or an employee of the debtor or of an investment banker specified in subsection (2) or (3) of this section, except that an employee of the debtor may serve as an assignee if the court finds that this is in the best interest of the estate and that there is no actual conflict of interest by reason of the employment;
- (5) has an interest materially adverse to the interest of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the debtor or an investment banker specified in subsection (2) or (3) of this section, or for any other reason;
- (6) otherwise has or represents an interest adverse to the estate;
- (7) has, at any time within five years before the date of the appointment of a receiver or the assumption of jurisdiction over the estate of an assignee, represented or been employed by the debtor or any secured creditor as an attorney, accountant, appraiser, or other professional, if the court finds an actual conflict of interest by reason of the representation or employment;
- (8) is an “insider” as defined by [11 U.S.C. § 101](#); or
- (9) represents or is employed by an unsecured creditor of the debtor and, on objection of a person in interest, the court finds an actual conflict of interest by reason of the representation or employment.

(b) Special Counsel or Accountant. An attorney or accountant who has represented or has been employed by the debtor is eligible to serve for a specified limited purpose if the employment is in the best interest of the estate and if the attorney or accountant does not represent or hold any interest materially adverse to the debtor or to the estate with respect to the purpose for which the attorney or accountant is to be employed.

(c) Ineligibility No Bar to Assumption of Jurisdiction. The court shall not refuse to assume jurisdiction over the estate of a debtor solely because it finds that the assignee is ineligible to serve under this Rule. After assuming jurisdiction, the court shall remove the ineligible assignee pursuant to Rule 13-701 and may take any action permitted or required by Rule 13-703.

MD Rules, Rule 13-106

RULE 13-106. PETITION FOR ASSUMPTION OF JURISDICTION OVER ESTATE OF AN ASSIGNEE

(a) **Venue.** A petition requesting the court to assume jurisdiction over the estate of an assignee shall be filed in the county where the debtor resides, is employed, or maintains a place of business, or in any county where some part of the estate is located.

(b) **Contents of Petition.** A petition for the assumption of jurisdiction over the estate of an assignee shall be signed by the petitioner and shall contain at least the following information:

- (1) the name and address of the assignee;
- (2) a statement that an assignment for the benefit of creditors has been executed;
- (3) in the case of a corporation, a statement indicating that articles of transfer transferring assets to the assignee have been executed;
- (4) in the case of a corporation, a statement indicating that required corporate resolutions have been executed; and
- (5) the nature, approximate value, and location of the property comprising the estate, to the best of the petitioner's knowledge, information, and belief.

(c) **Exhibits to Petition.** The petitioner shall attach to the petition a copy of the following documents or shall explain in the petition their absence:

- (1) the executed assignment for the benefit of creditors;
- (2) in the case of a corporation, the executed articles of transfer and the executed corporate resolutions of the corporation; and
- (3) the affidavit of an assignee, as required by Rule 13-302.

MD Rules, Rule 13-107

RULE 13-107. BOND

(a) **Duty to File.** Before taking charge of an estate, a receiver shall file a bond in the court in which the receiver has been appointed and an assignee shall file a bond in the court in which a petition to assume jurisdiction of the estate has been filed.

(b) **Amount of Bond.** Notwithstanding any contrary provision in Rule 1-402, the amount of the bond shall be no greater than the net value of the property of the estate. In the event of a later sale of property by the receiver or assignee, the court shall evaluate the bond previously filed and may permit a decrease in the amount of the bond.

(c) **Motion to Modify Amount of Bond; Notice.** If a motion to modify the amount of a bond is filed pursuant to Rule 1-402, notice shall be given to such persons as the court may direct.

(d) **Terms of Bond.** The bond shall be to the State of Maryland and shall be conditioned upon the faithful discharge of the duties of the receiver or assignee.

(e) **Payment of Bond Premium From Estate.** Unless the court orders otherwise, a receiver or assignee is entitled to pay and be allowed the cost of the premium out of the estate.

MD Rules, Rule 13-201

RULE 13-201. PUBLICATION OF NOTICE TO CREDITORS

(a) **Notice by Receiver or Assignee.** Promptly but in no event later than 5 days after the court appoints a receiver or assumes jurisdiction over the estate of an assignee, the receiver or assignee shall file a form of Notice to Creditors with the clerk, who shall issue the Notice. The receiver or assignee shall cause the Notice to be published.

(b) **Form of Notice.** The Notice to Creditors shall be substantially in one of the following three forms, as applicable:

[CAPTION]

NOTICE TO CREDITORS BY RECEIVER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to

,

(Name in bold type)

whose business address is

and whose business is

,

that this Court has appointed

,

(Name in bold type)

whose address is _____, as Receiver.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

Date Notice Issued

Clerk of the Circuit Court for

(County or Baltimore City)

Address

Receiver

Attorney for Receiver

Address

Address

Telephone Number

Telephone Number

[CAPTION]

NOTICE TO CREDITORS BY ASSIGNEE

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, DEBTOR

Notice is given with respect to

,

(Name in bold type)

whose business address is

and whose business is

, that the Debtor has executed an Assignment for the Benefit of Creditors and that

,
(Name in bold type)

whose address is

has been designated as Assignee.

The deed of assignment [] does [] does not contain a provision requiring creditors to release their claims against the debtor as a condition to (1) sharing in the distribution under the deed or (2) being accorded a preferred status over other creditors.

All persons having claims against the Debtor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

Date Notice Issued

Clerk of the Circuit Court for

(County or Baltimore City)

Address

Assignee

Attorney for Assignee

Address

Address

Telephone Number

Telephone Number

[CAPTION]

NOTICE TO CREDITORS OF BULK TRANSFER

TO ALL PERSONS INTERESTED IN THE ESTATE OF _____, BULK TRANSFEROR

Notice is given with respect to

,
(Name in bold type)

whose business address is

and whose business is __, that the Transferor has effected a bulk transfer of property to

,

(Name in bold type)
transferee, whose address is

and that

(Name in bold type)
whose address is

has been appointed as Receiver pursuant to Code, Commercial Law Article, § 6-106.
All persons having claims against the Transferor should file them, under oath, with the Clerk of the Circuit Court at the address below not later than 120 days from the date this Notice was issued.

Date Notice Issued

Clerk of the Circuit Court for

(County or Baltimore City)

Address

Receiver

Attorney for Receiver

Address

Address

Telephone Number

Telephone Number

(c) Where Published; Frequency. A copy of the Notice to Creditors shall be published in a newspaper of general circulation in the county where the court is located. The Notice shall be published at least once a week in each of three successive weeks, and the last publication shall occur not less than ninety days before the date specified in the Notice as the last day for filing claims.

(d) Certificate of Publication. On or before the last day for filing claims, the receiver or assignee shall file a certificate that publication has been made pursuant to this Rule.

Source: This Rule is derived from former Rule BP4 a 1.

MD Rules, Rule 13-202

RULE 13-202. MAILING OF NOTICE TO CREDITORS

(a) After Appointment of Receiver or Assumption of Jurisdiction. Within five days after the clerk issues the Notice to Creditors, the receiver or assignee shall send a copy of the Notice by first class mail, postage prepaid, to all known creditors of the debtor. The receiver or assignee shall file a certificate of mailing of the Notice within five days after the initial mailing.

(b) After Filing of Schedule. Within five days after the expiration of the time for the debtor to file the schedule required by Rule 13-203, the receiver or assignee shall send a copy of the

Notice by first class mail, postage prepaid, to all creditors shown on the schedule to whom the Notice was not sent pursuant to section (a) of this Rule. Not later than the last day for filing claims, the receiver or assignee shall file a certificate of mailing.

(c) Later-Discovered Creditors. The receiver or assignee shall promptly send a copy of the Notice by first class mail, postage prepaid, to all creditors whose identity is discovered at any time after the schedule is filed or the expiration of the time for filing it. Not later than the last day for filing the final report and account, the receiver or assignee shall file a certificate of mailing.

MD Rules, Rule 13-203

RULE 13-203. SCHEDULE

(a) Preparation and Filing by Debtor. Within fifteen days after the court appoints a receiver or assumes jurisdiction over the estate of an assignee, the debtor shall prepare and file with the clerk a schedule of property and debts under oath.

(b) Form of Schedule. The debtor's schedule shall be in substantially the following form:

[CAPTION]

SCHEDULE OF PROPERTY AND DEBTS

Name of Debtor

Residence Address

Occupation/Nature of Business

Business Address

I solemnly affirm under the penalties of perjury that the contents of the attached schedule are true to the best of my knowledge, information, and belief.

Date

Signature of Debtor

A. Property of Debtor.

Nature and description	Location	Estimated Market Value	Amount of Lien or Encumbrance
------------------------	----------	------------------------	-------------------------------

B. Debts and Taxes Owed by Debtor.

	Name and address of creditor, including taxing authority	Security held by creditor, if any	Whether claim is contingent, unliquidated, or disputed	Nature of and consideration for the debt	Amount due or claimed
--	--	-----------------------------------	--	--	-----------------------

1. Priority Claims

- A. Taxes
 - B. Wages
 - C. Other
2. Secured Creditors
 3. General Unsecured Creditors

C. Recent Transfers.

1. Did the Debtor transfer or dispose of any property, other than in the ordinary course of business, to a spouse during the three years immediately preceding the making of the assignment for the benefit of creditors or the appointment of the receiver?

Yes No

2. Did the Debtor transfer or dispose of any property, other than in the ordinary course of business, to anyone other than a spouse during a period of one year immediately preceding the making of the assignment for the benefit of creditors or the appointment of the receiver?

Yes No

3. If the answer to either of the above questions is “Yes,” give the following information as to each transfer or disposition:

Date of transfer or disposition	Transferee and relation to debtor, if any	Description of property	Consideration and disposition thereof
--	--	--------------------------------	--

D. Property Claimed as Exempt (applies only to individuals).

Nature and description	Location	Basis for exemption	Estimated market value
-------------------------------	-----------------	----------------------------	-------------------------------

(c) Preparation and Filing by Assignee or Receiver. If the debtor fails to file the schedule within the required time, the receiver or assignee to the extent able to supply the information shall prepare and file a schedule containing the information required by section (b) of this Rule. The schedule shall be filed within thirty days after the debtor's required filing date.

(d) Failure of Receiver or Assignee to File Schedule. If a receiver or assignee who is required to file a schedule fails to do so within the required time, any person having an interest may file a report of the delinquency with the court. Upon the filing of a report or on its own initiative, the court may issue an order to the receiver or assignee to show cause in writing on or before a specified date why the receiver or assignee should not be compelled to file the schedule or be removed. Unless the court orders otherwise, the specified date shall be 20 days after the date prescribed for service in the order. The order shall also specify the persons to be served with the

order, the method of service, and, if a hearing is scheduled when the order is issued, the date, time, and place of the hearing. Unless cause is shown or the schedule is filed, the court shall remove the receiver or assignee pursuant to Rule 13-701 and may take any action permitted or required by Rule 13-703.

(e) Order Compelling Disclosure; Sanction. The court at any time may order the debtor, an officer or director of the debtor, or any other person who may have information that is necessary for the completion of the schedule to appear before the court or before an examiner pursuant to Rule 2-542 and to disclose the information. The debtor, an officer or director of a debtor, or other person who refuses to comply with an order compelling disclosure may be held in contempt pursuant to Title 15, Chapter 200 of these Rules.

MD Rules, Rule 13-301

RULE 13-301. EMPLOYMENT OF ATTORNEY, ACCOUNTANT, APPRAISER, AUCTIONEER, OR OTHER PROFESSIONAL

(a) Court Approval Required. A receiver or assignee shall not employ an attorney, accountant, appraiser, auctioneer, or other professional without prior approval of the court. With the court's prior approval, a receiver or assignee may serve as attorney or accountant for the estate.

(b) Application; Contents. An application requesting authority to employ an attorney, accountant, appraiser, auctioneer, or other professional shall be accompanied by the affidavit required by Rule 13-302 and shall set forth:

- (1) the necessity for the employment; and
- (2) in the event the schedule required by Rule 13-203 has not been filed, the nature and approximate amount of the debtor's property and debts.

(c) Prior Approval of Compensation in Certain Instances. If the application requesting authority to employ an attorney, accountant, appraiser, auctioneer, or other professional sets forth in reasonable detail the basis for the proposed compensation of the person to be employed, the court, by order, may authorize compensation to be paid without further order of court for work completed within stated limits. This section does not apply to a receiver or assignee who serves as attorney or accountant for the estate.

MD Rules, Rule 13-302

RULE 13-302. DISCLOSURES BY RECEIVER, ASSIGNEE, AND PROFESSIONALS

(a) Required Disclosure by Affidavit. A receiver or assignee and each attorney, accountant, appraiser, auctioneer, or other professional to be employed by the assignee or receiver shall file an affidavit that states the following:

- (1) whether the person has, within five years before the date of the appointment of a receiver or the assumption of jurisdiction over the estate of an assignee, represented or been employed by the debtor, an insider of the debtor as defined by [11 U.S.C. § 101](#), any secured or unsecured creditor of the debtor, or an investment banker of the debtor, and the nature of the representation or employment;
- (2) if the debtor, insider, secured or unsecured creditor, or investment banker is a corporation, association, or partnership, whether the assignee, receiver, accountant, appraiser, auctioneer, or other professional had, within five years before the date of the appointment of a receiver or the assumption of jurisdiction over the estate of an assignee, any financial interest in the corporation, association, or partnership and the extent of the financial interest; and
- (3) that the person is not disqualified for any of the reasons set forth in Rule 13-105.

(b) When Filed. The affidavit shall be filed:

- (1) by an assignee, with the petition;
- (2) by a receiver, prior to assuming the duties of office;
- (3) by an attorney, accountant, appraiser, auctioneer, or other professional, with the application requesting authority to employ the person.

(c) Supplemental Disclosure. A person who has filed an affidavit under this Rule and who learns that the information in the affidavit is inaccurate or incomplete shall promptly file a supplemental affidavit.

(d) Penalty for Failure to Disclose Required Information. In addition to any other remedies provided by law, the court, pursuant to Rule 13-701, may remove any person who fails to disclose any information required to be disclosed by this Rule and may take any action permitted or required by Rule 13-703.

MD Rules, Rule 13-303

RULE 13-303. COMPENSATION AND EXPENSES FOR RECEIVER, ASSIGNEE, OR PROFESSIONAL

(a) Application for Allowance of Compensation and Expenses. Before a receiver, assignee, or any person performing services for the estate pursuant to Rule 13-301 is paid compensation or reimbursed for expenses not previously approved by the court, the receiver or assignee shall file with the court an application for the allowance of compensation and expenses. The application shall include:

- (1) the estimated gross amount of the estate;
- (2) the estimated total of the sums to be paid for liens, preferences, and costs of administration;
- (3) the estimated approximate sum for distribution among secured, priority, and unsecured creditors;
- (4) a detailed description of the services rendered, time expended, and expenses incurred;
- (5) the amount of compensation and expenses requested;
- (6) the amount of any compensation or expenses previously allowed by the court;
- (7) the amount of any compensation and expenses received from or to be paid by any source other than the estate; and
- (8) a detailed description of any agreement or understanding for a division of the compensation between the person rendering services and any other person except those specifically permitted to share in compensation by section (c) of this Rule.

(b) Allowance. The court shall review the application and any evidence presented and shall determine the appropriate amount of compensation and expenses to be paid to the receiver, assignee, or person performing services for the receiver or assignee. In determining the amount, the court is not bound by any compensation or commission fixed in an assignment for the benefit of creditors or in any other agreement.

(c) Sharing of Compensation. Without the express written approval of the court, a receiver, assignee, or person performing services for a receiver or assignee shall not, in any form or manner, share or agree to share compensation for services rendered with any person other than a partner, employer, or regular employee of the person rendering services.

MD Rules, Rule 13-401

RULE 13-401. PROOF OF CLAIM

(a) Filing. Any person who wishes to make a claim against the estate of a debtor shall file a verified proof of claim with the clerk. The proof of claim shall be filed within 120 days after the date the Notice to Creditors is issued by the clerk.

(b) Form. A proof of claim shall be in substantially the following form with supporting documentation attached as indicated:

[CAPTION]

CLAIM AGAINST DEBTOR

The claimant certifies that the debtor owes the claimant the sum of \$_____.

BY _____

Name of Claimant

The consideration or basis for the debt is _____.

The debt is:

[] an unsecured claim in the amount of \$_____ (attach statement of account, invoices, promissory notes, or other evidence of claim); or

[] a secured claim in the amount of \$_____ (attach evidence of perfection of security interest).

The undersigned certifies, in accordance with the verification below, that the debtor is indebted to the claimant in the amount shown, that there is no security for the debt other than that stated above or in an attachment to this claim form, that no unmatured interest is included, and that the undersigned is authorized to make this claim.

[] I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing claim are true; or

[] I solemnly affirm under the penalties of perjury that I am employed by the claimant firm as _____; that the claimant keeps regular books

(insert title)

of account; that the keeping of these books is in my charge or under my supervision; that the entries in these books were made in the regular course of business; and that the entries show the facts set forth in this claim.

Name of Claimant

Signature of claimant or person authorized to make verifications on behalf of claimant

Name and Title of Person Signing Claim

Address

Date

Telephone Number

Instructions:

If the claim is based upon an obligation owed jointly to two or more persons, any one of the joint creditors may verify the claim. If the claimant is a corporation, association, or partnership, any officer, partner, or authorized agent may verify the claim. If the original and all copies of a written instrument securing a claim are lost or destroyed, the claimant must attach a statement explaining the circumstances of the loss or destruction.

(c) Late Filed Claims.

(1) *Before Reference to Auditor.* A proof of claim that is filed late but before any reference to an auditor for the stating of an account is entitled to the same consideration for distribution as a timely filed proof of claim.

(2) *After Reference to Auditor.* A person who files a proof of claim after reference to an auditor is not entitled to participate in the next distribution unless the court on application of the claimant and for good cause shown orders otherwise. If the court permits participation, it may order the claimant to pay the cost of restating the account if the auditor must do so in whole or in part to include the claim. A proof of claim filed too late to be included in one or more auditor's accounts, if allowed, shall be included in any subsequent account, and the claimant is entitled to receive a distribution on the same basis as those already received by other creditors on prior accounts. The distribution shall be made before those creditors receive any further distribution. Thereafter, the claimant shall share with them in any future distributions.

MD Rules, Rule 13-402

RULE 13-402. OBJECTIONS TO CLAIMS

An objection to a proof of claim may be filed at any time before final ratification of the auditor's account in which the claim is allowed. The grounds for the objection shall be stated with particularity. The objection shall be served pursuant to Rule 1-321 on the claimant and, unless the receiver or assignee is the objecting party, on the receiver or assignee. On request, the claimant or the objecting party is entitled to a hearing.

MD Rules, Rule 13-403

RULE 13-403. COMPROMISE OF CLAIM OR DISPUTE

(a) **Application.** A receiver or assignee may file an application requesting the court to authorize or ratify a compromise or settlement of any claim or matter relating to an estate.

(b) **Ratification.** If satisfied that the action is in the best interest of the estate, the court may authorize or ratify the proposed compromise or settlement and may impose any appropriate terms and conditions.

MD Rules, Rule 13-501

RULE 13-501. REPORTS

(a) **Annual and Final Report; Filing.** A receiver or assignee shall file an annual report under oath within 60 days after the end of the reporting period. The reporting period shall be (1) the year ending on the anniversary of the date upon which the court appointed the receiver or assumed jurisdiction over the estate; (2) upon notice to the trust clerk, any other one-year period chosen by the receiver or assignee, provided that the interval between the last report (or appointment or assumption of jurisdiction) and the report submitted shall not exceed one year; or (3) any other period ordered by the court. Before any interim or final distribution of the estate may be made, the receiver or assignee shall file a report for the period from the closing date of the last annual report until the proposed date on which the estate will be partially or fully distributed.

(b) **Form of Report.** A report shall be in substantially the following form:

[CAPTION]

REPORT OF RECEIVER OR ASSIGNEE

Name of Debtor

Name of Receiver or

Reporting Period _____ Assignee _____
to _____
_____, _____, _____, _____
(month) (day) (year) (month) (day) (year)

1. Summary of Property Held in Fiduciary Capacity at Beginning of Reporting Period:

Nature and Description of Property	Estimated Market Value
---	-------------------------------

2. Changes During the Period Covered by This Report:

A. Collections and Receipts, including interest and dividends received:

Date	Description	Amount Received
	Total Receipts	\$

B. Expenditures and Distributions:

Date	Description	Amount Paid
	Total Payments	\$

C. Property Sold or Otherwise Transferred:

Date	Description	Court Order Reference	Transferee	Consideration Received

D. Property Acquired:

Date	Description	Court Order Reference	Transferor	Consideration Paid

3. Summary of Property Held in Fiduciary Capacity at End of Reporting Period:

Nature and Description of Property	Estimated Value	Market
---	------------------------	---------------

4. Proposed Distribution (Distribution Reports Only):

Previous distributions were:

Date Authorized by Court	Amount of Distribution
-----------------------------	---------------------------

Total distributions to date:

The amount available for [] partial [] final distribution is \$_____.

If the proposed distribution is partial, the amount proposed to be retained in estate is \$_____.

(Include in final reports only) All property of the estate has been accounted for and the undersigned knows of no debts incurred during the administration of the estate other than those which have been paid or which are reflected in this Report.

(Include in all reports) I solemnly affirm under the penalties of perjury that the contents of this Report are true to the best of my knowledge, information, and belief.

Date:

Receiver/Assignee

Address

(c) Weekly Report if Conducting a Business. For each calendar week during which the receiver or assignee conducts the business of the debtor, the receiver or assignee shall also file a report listing the receipts and disbursements in reasonable detail. The report shall be filed not later than the third day after the end of the weekly reporting period.

(d) Further Accountability. Nothing in this Rule shall be construed to abridge the power of the court to require a receiver or assignee to submit reports covering periods greater or lesser, or at times earlier or later, than those prescribed in this Rule or to require the submission of more detailed information than that which is prescribed in this Rule.

(e) Failure to File Reports; Penalties.

(1) *Order.* If a receiver or assignee fails to file a timely annual report, the trust clerk shall inform the court in writing, and the court shall issue an order to the receiver or assignee to show cause within 15 days why the receiver or assignee should not be removed. The order shall be served on the receiver or assignee and a copy sent to the surety on the bond of the receiver or assignee in accordance with Rule 13-701(b).

(2) *Sanctions.* If the receiver or assignee does not comply with the order by filing an answer and all overdue reports, the court may remove the receiver or assignee pursuant to Rule 13-701 and may take any action permitted or required by Rule 13-703.

(f) Examination by Trust Clerk.

(1) *Examination of Reports.* The trust clerk shall examine all reports submitted pursuant to this Rule, except those referred to an auditor pursuant to Rule 13-502. The trust clerk shall determine whether all of the required information has been submitted and whether the amount of and surety on the bond of the receiver or assignee are sufficient to protect the estate.

(2) *Examination of Property Not Required.* Unless the court orders otherwise, the trust clerk need not examine the property of the estate.

(3) *Report and Recommendation.* The trust clerk shall (A) report any irregularities in the report to the court, (B) bring to the court's attention any other matter that the trust clerk considers appropriate, and (C) make any appropriate recommendation.

MD Rules, Rule 13-502

RULE 13-502. REFERRAL TO AUDITOR

(a) When Required. The court shall refer to an auditor pursuant to Rule 2-543 all papers filed for the purpose of making a partial or final distribution of the estate.

(b) Action by Auditor. The auditor shall audit a final or interim distribution report filed pursuant to Rule 13-501 and shall state an account setting forth the distribution of the estate.

(c) Notice by Auditor.

(1) *To Whom Given.* The auditor shall give notice by first class mail, postage prepaid, to the debtor, the receiver or assignee, and each creditor who has filed a claim in the proceedings that an auditor's account has been stated.

(2) *Contents.* In addition to the requirements of Rule 2-543, the notice by the auditor shall contain the following information:

(A) the total amount of property stated in the account;

(B) the total amount of approved liens and priorities;

(C) the total costs of administration, including as separate items the court costs and the compensation of the receiver, assignee, or person employed as a professional;

(D) the amount available for distribution to general creditors;

(E) the percentage of the creditor's claim to be paid; and

(F) whether the distribution is final or partial.

(d) Interim Distribution. On application of the receiver, assignee, or other person in interest, the court may direct such partial distribution as may be safely made from the money in the hands of the receiver or assignee to those creditors whose claims are not in dispute, reserving sufficient assets to secure, after final settlement of all claims, a proportionate distribution among all creditors whose claims are finally allowed.

MD Rules, Rule 13-601

RULE 13-601. ABANDONMENT OF PROPERTY AND RECORDS

(a) Abandonment of Property. On application of a receiver, an assignee, or a creditor, the court may order the abandonment of any property of the debtor that is worthless, overburdened, or otherwise of inconsequential value and benefit to the estate.

(b) Abandonment or Destruction of Books and Records.

(1) *Application.* After the final ratification of an auditor's account that provides for the final distribution of the estate, the receiver or assignee may apply to the court for permission to destroy, return to the debtor, or otherwise dispose of all or part of the books and records of the debtor or of the estate.

(2) *Notice to Debtor and Tax Authorities.* Notice of the application shall be given by first class mail, postage prepaid, to the Commissioner of Internal Revenue of the United States, the Comptroller of the Treasury of the State of Maryland, and the debtor at the debtor's last known address. If an objection is filed within 30 days after notice is given, the court shall hold a hearing.

Committee note: This Rule does not address the consequences of destruction of books and records under state and federal revenue laws.

(3) *Order.* For good cause shown, the court may authorize the receiver or assignee to destroy, return to the debtor, or otherwise dispose of all or part of the books and records of the debtor or of the estate by or after a date fixed in the order.

MD Rules, Rule 13-701

RULE 13-701. REMOVAL OF ASSIGNEE, RECEIVER, OR PROFESSIONAL

(a) On Court's Own Initiative; By Petition. The court or any person having an interest in the estate may initiate proceedings to remove a receiver, assignee, or any person employed as a professional by the receiver or assignee. The court may initiate removal proceedings by filing an order pursuant to section (b) of this Rule and shall state in the order the reasons for the proposed removal. An interested person may initiate removal proceedings by filing a petition that shall state the reasons for the requested removal and may include a request for the appointment of a successor receiver, assignee, or professional.

(b) Show Cause Order; Service. If removal proceedings are initiated, the court shall order the receiver, assignee, or professional to show cause why the receiver, assignee, or professional should not be removed or be subject to other sanctions. The order, together with a copy of any petition, shall be served pursuant to Rule 2-121 on the person sought to be removed or, if it is shown by affidavit that the whereabouts of the person sought to be removed are unknown and that reasonable efforts have been made in good faith to locate the person, the court may order service pursuant to Rule 2-122. Copies of the show cause order and any petition shall also be sent by first class mail, postage prepaid, to the surety on the bond of the receiver or assignee and to any other persons directed by the court.

(c) Disposition. After a hearing and for cause, including ineligibility, the court may remove a receiver, assignee, or professional.

Cross reference: As to the statutory grounds for the removal of a fiduciary, including a receiver or assignee, *see* Code, [Estates and Trusts Article, § 15-112](#).

MD Rules, Rule 13-702

RULE 13-702. RESIGNATION OF RECEIVER OR ASSIGNEE

(a) Petition. A receiver may file a petition for permission to resign in the court in which the receiver was appointed. An assignee may file a petition to resign in the court in which a petition to assume jurisdiction of the estate has been filed. The petition shall state the reasons for the proposed resignation and may include a request for the appointment of a successor receiver or assignee.

(b) Report to Be Filed. The receiver or assignee shall file with the petition a report pursuant to Rule 13-501 for any period not covered in an annual report previously filed or, if no annual report has been filed, from the date the receiver or assignee took charge of the estate.

(c) Notice. The receiver or assignee shall mail a copy of the petition by first class mail, postage prepaid, to those interested persons designated by the court.

(d) Termination of Appointment. The resignation of a receiver or assignee does not terminate the appointment until the resignation has been approved by the court.

(e) Proceedings. The court may grant or deny the requested relief with or without a hearing. In an order granting the petition, the court may specify any conditions for the acceptance of the resignation that the nature of the case may require.

MD Rules, Rule 13-703

RULE 13-703. APPOINTMENT OF SUCCESSORS; FORFEITURE OF COMPENSATION

When a receiver, assignee, or professional dies, resigns, or is removed, the court may appoint a successor on its own initiative or on the petition of any person having an interest. The court shall order that all appropriate papers, records, and property be turned over to the successor and may order that a removed or resigning receiver or assignee file any report required by Rule 13-501. The court may order the person removed to forfeit any future compensation and return any compensation for services previously rendered.

MASSACHUSETTS

Massachusetts Rules of Civil Procedure (Mass.R.Civ.P.), Rule 66

Rule 66. Receivers

(a) An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of this Commonwealth and with the laws thereof. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

(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.

(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.

(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.

(e) No order discharging a receiver from further responsibility will be entered until he has settled his final account.

(f) The court, in its discretion, may relieve any receiver from any requirement imposed by sections (b)-(e) of this rule.

M.G.L.A. 156D § 14.32

§ 14.32. Receivership or custodianship

Section 14.32. RECEIVERSHIP OR CUSTODIANSHIP

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint 1 or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in the commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) the receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of the commonwealth;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

M.G.L.A. 156B § 104

§ 104. Receivership; dissolved or terminated corporation; jurisdiction; application; powers of receiver

If the existence of the corporation for other purposes is terminated (1) by dissolution under the provisions of section ninety-nine, one hundred, or one hundred and one, (2) by the expiration of the period for its duration limited by its articles of organization, or (3) in any other manner, the supreme judicial or superior court, upon application of a creditor or stockholder, shall have jurisdiction in equity to appoint one or more receivers to take charge of its estate and effects and to collect the debts and property due and belonging to it, with power to prosecute and defend suits in its name or otherwise, to appoint agents under them and to do all other acts which might be done by such corporation, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers and the existence of the corporation may be continued as long as the court finds necessary for said purposes.

M.G.L.A. 156B § 105

§ 105. Receivership; corporation as judgment debtor; powers of receiver

If a judgment has been recovered against a corporation and it has neglected for thirty days after demand made on execution to pay the amount due with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution sufficient to satisfy the same and the execution has been returned unsatisfied, one or more receivers may be appointed with the powers and duties provided in, and subject to, section one hundred and four.

M.G.L.A. 156B § 106

§ 106. Duties of receiver

The receivers shall pay all debts due from the corporation if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who approve their debts in the manner directed by any decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to those who are justly entitled thereto as having been stockholders of the corporation, or their legal representatives.

M.G.L.A. 156B § 107

§ 107. Dissolution; return; notice to corporation

If a corporation is dissolved under the authority of section ninety-nine, the clerk of the court in which the decree therefor is entered shall forthwith make return thereof to the state secretary giving the name of the corporation and the date upon which such decree was entered. The state

secretary shall thereupon send notice of such dissolution, and the date thereof, to the corporation at its last address as appearing on the records of the state secretary.

M.G.L.A. 156C § 44

§ 44. Court-decreed dissolution

On application by or for a member or manager the superior court department of the trial court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on its business in conformity with the certificate of organization or the operating agreement.

MICHIGAN

M.C.L.A. 600.2926

600.2926. Receivers; appointment; bond; termination

Sec. 2926. Circuit court judges in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law. This authority may be exercised in vacation, in chambers, and during sessions of the court. In all cases in which a receiver is appointed the court shall provide for bond and shall define the receiver's power and duties where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors and others interested.

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.

M.C.L.A. 600.2927

600.2927. Mortgaged property; nonpayment of taxes or insurance; receiver

Sec. 2927. (1) Nonpayment of taxes or insurance as waste. The parties to any mortgage, trust mortgage, or deed of trust of real property, or any extension thereof, may, by agreement therein contained to that effect, provide that the failure of the mortgagor or grantor, as the case may be, to pay any taxes assessed against such property or installments thereof, in the event said taxes are being paid under the provisions of Act No. 126 of the Public Acts of 1933, as amended,¹ or any insurance premium upon policies covering any property located upon such premises constitutes waste.

(2) Receiver to prevent waste; collection of rents and income. If such mortgagor or grantor in such instrument fails to pay such taxes or insurance premiums upon property subject to the terms of a mortgage, trust mortgage, or deed of trust containing such agreement 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 for the purpose of preventing such waste. Subject to the order of the court, the receiver may collect the rents and income from such property and shall exercise such control over such property as to such court may seem proper.

(3) Receiver for homestead or farm; property under \$7,500 value. No receiver may be appointed under the provisions of this section for any dwelling house or farm occupied by any owner thereof as his home or farm. No receiver may be appointed under the provisions of this section for any store or other business property having an assessed valuation of \$7,500.00 or less.

MINNESOTA

M.S.A. § 576.21

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.

M.S.A. § 576.22

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.

M.S.A. § 576.23

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.

M.S.A. § 576.24

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.

M.S.A. § 576.25

Formerly cited as MN ST § 576.01

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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

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

M.S.A. § 576.26

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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.27

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.

M.S.A. § 576.28

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.

M.S.A. § 576.29

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.

Subd. 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.

Subd. 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.

M.S.A. § 576.30

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.

Subd. 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](#).

Subd. 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.

M.S.A. § 576.31

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.

M.S.A. § 576.32

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.

Subd. 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](#).

M.S.A. § 576.33

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.

M.S.A. § 576.34

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.

M.S.A. § 576.35

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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.36

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.

Subd. 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.

M.S.A. § 576.37

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.

Subd. 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.

Subd. 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.

M.S.A. § 576.38

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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.39

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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.40

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.

Subd. 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.

M.S.A. § 576.41

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.

Subd. 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.

M.S.A. § 576.42

576.42. Stays

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

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.43

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.

M.S.A. § 576.44

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.

M.S.A. § 576.45

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.

Subd. 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.

Subd. 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.

M.S.A. § 576.46

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.

Subd. 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.

Subd. 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.

Subd. 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.

M.S.A. § 576.47

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.

M.S.A. § 576.48

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.

M.S.A. § 576.49

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.

Subd. 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.

Subd. 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.

M.S.A. § 576.50

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.

Subd. 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.

Subd. 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.

M.S.A. § 576.51

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](#).

Subd. 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.

M.S.A. § 576.52

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.

M.S.A. § 576.53

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.

Subd. 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.

Subd. 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.

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Miss. Code Ann. § 11-5-151

§ 11-5-151. Appointment or removal in vacation

Receivers may be appointed by the chancellor in vacation, as well as by the chancery court in term time; and any receiver may be removed by the chancellor in vacation, as well as by the chancery court in term time; but before any receiver shall be so removed in vacation, the party applying therefor must give the adverse party, or his solicitor, and the receiver five days' notice of the time and place of presenting such application; such application may be heard in term time on two days' notice.

Miss. Code Ann. § 11-5-153

§ 11-5-153. Appointment without notice prohibited

A receiver shall not be appointed without the party praying the appointment having given the opposite party at least five days' notice of the time and place of making the application, unless it shall appear that an immediate appointment is necessary, or good cause be shown for not giving notice.

Miss. Code Ann. § 11-5-155

§ 11-5-155. Complainant to execute bond

Before any receiver shall be appointed without notice, the party applying for the appointment shall execute bond, payable to the adverse party, in a sufficient penalty to be fixed by the court or chancellor, with sufficient sureties, conditioned to pay all damages that may be sustained by the appointment of such receiver in case the appointment be revoked; and said bond shall be filed in the cause, and damages may be recovered thereon in the suit in the same manner as damages are recoverable on an injunction bond or the party entitled to damages may maintain an independent suit on such bond for such damages.

Miss. Code Ann. § 11-5-157

§ 11-5-157. Bond in place of receiver

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.

Miss. Code Ann. § 11-5-159

§ 11-5-159. Receiver to give bond

Every receiver, when appointed, shall, before being authorized to act as such, give bond, payable to the state, in such penalty and with such sureties as may be approved by the court or chancellor, conditioned that he will in all things faithfully discharge the duties of his office as receiver; which bond shall be filed with the clerk of the court, and may be put in suit, in the name of the state, for the use of the party aggrieved, from time to time, until the whole penalty shall be recovered.

Miss. Code Ann. § 11-5-161

§ 11-5-161. Receivers subject to court orders

Receivers shall be subject to the orders, instructions, and decrees of the court, and of the chancellor in vacation; and they, or any party in interest, may apply therefor in term time, or to the chancellor in vacation, or for modifications of previous orders or instructions; and obedience thereto may be enforced by attachment.

Miss. Code Ann. § 11-5-163

§ 11-5-163. Estate of decedents, minors and persons of unsound mind

In all cases in which it may be thought to be necessary for the protection of the estate of decedents, minors, and persons of unsound mind, a receiver may be appointed, either by the court or by the chancellor in vacation, subject to the provisions of [sections 11-5-151 to 11-5-161](#).

Miss. Code Ann. § 11-5-165

§ 11-5-165. Money paid into court

When money shall be paid into court under its order, a receiver may be appointed to keep the same, who shall give bond and security as in other cases; but if the money shall be ordered to be paid to the clerk of such court, his official bond shall cover it, and an additional bond may be required if the court or chancellor shall think proper.

Miss. Code Ann. § 11-5-167

§ 11-5-167. Compensation

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.

Miss. Code Ann. § 9-5-103

§ 9-5-103. Reduction of specified bonds

Whenever it shall appear by petition to the chancery court, or chancellor in vacation, that any bond given by an assignee, receiver, executor, administrator, guardian, or trustee is in excess of the value of the estate being administered, and as such is an unnecessary expense to the estate, or that other sufficient cause appears for so doing, the chancery court or chancellor in vacation may, after five days' service of copy of said petition on the surety, cancel the bond or reduce the same to an amount sufficient to protect the estate, or accept a new bond in substitution of an existing one. However, the decree rendered shall not affect the liability upon a bond which accrued prior to its cancellation, reduction or substitution.

MISSOURI

V.A.M.S. 515.240

515.240. Appointment of receiver

The court, or any judge thereof in vacation, shall have power to appoint a receiver, whenever such appointment shall be deemed necessary, whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject of a tender, and to keep and preserve all property and protect any business or business interest entrusted to him pending any legal or equitable proceeding concerning the same, subject to the order of the court.

V.A.M.S. 515.250

515.250. Bond of receiver--powers

Such receiver shall give bond, and have the same powers and be subject to all the provisions, as far as they may be applicable, enjoined upon a receiver appointed by virtue of the law providing for suits by attachment.

V.A.M.S. 515.260

515.260. Compensation of receiver

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.

V.A.M.S. 521.300

521.300. Receiver appointed, by whom--oath and bond required--who may sue on bond

The court, or in vacation the judge, may in a proper case, on the application of the plaintiff, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall enter into bond to the state of Missouri, in such sum as the court or judge may direct, and with security approved by the court or judge, for the faithful performance of his duty as receiver, and that he will pay over all money and account for all property which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct. This bond may be sued on, in the name of the state, at the instance and to the use of any party injured.

V.A.M.S. 351.498

351.498. Receivership or custodianship

1. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and may sue and defend in his own name as receiver of the corporation in all courts of this state;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

Supreme Court Rule 68.02

68.02. Receivers in Circuit Courts

(a) Appointment of Receiver. Whenever in a pending legal or equitable proceeding it appears to the court that a receiver is necessary to keep, preserve and protect any business, business interest or property, including money or other thing deposited in court or the subject of a tender, the court, or any judge thereof in vacation, may appoint a receiver whose duty it shall be to keep, preserve and protect, to the extent and in the manner that the court may direct, that which the receiver is ordered to take into the receiver's charge.

(b) Bond of Receiver. Such receiver shall give bond, and have the same powers and be subject to all the provisions, as far as they may be applicable, enjoined upon a receiver appointed by virtue of the law providing for suits by attachment.

(c) Compensation of Receiver. The court shall allow the receiver reasonable compensation for his services to be charged upon such of the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the court, as the court may direct.

MONTANA

MCA 27-20-101

27-20-101. Definition of property

The word “property”, used in this chapter, includes the rents, profits, or other income and the increase of real or personal property.

MCA 27-20-102

27-20-102. When and by whom receiver appointed

A receiver may be appointed by the court in which an action is pending when the action is:

- (1) by a vendor to vacate a fraudulent purchase of property;
- (2) by a creditor to subject any property or fund to the creditor's claim;
- (3) 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 of the property or fund is probable and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;
- (4) by a mortgagee for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property and when it is shown that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;
- (5) after judgment, to carry the judgment into effect;
- (6) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or
- (7) for proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.

MCA 27-20-103

27-20-103. Appointment of receiver upon dissolution of corporation

Upon the dissolution of any corporation, the district 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, to collect the debts and property due and belonging to the corporation, to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

MCA 27-20-201

27-20-201. Notice of application for appointment before judgment

Notice of an application for the appointment of a receiver in an action before judgment in the action must be given to the adverse party unless the party has failed to appear in the action and the time limited for the party's appearance has expired or unless it appears to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of.

MCA 27-20-202

27-20-202. Interested persons not to be appointed without consent

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.

MCA 27-20-203

27-20-203. Security to cover damages caused by appointment upon ex parte application

If a receiver is 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 the defendant may sustain by reason of the appointment of the receiver and the entry by the receiver upon the receiver's duties, if the applicant procured the appointment wrongfully, maliciously, or without sufficient cause. The court may, at any time after the appointment, require an additional undertaking.

MCA 27-20-301

27-20-301. Oath and undertaking to faithfully discharge duties

Before beginning the duties as receiver, the receiver must be sworn to perform the duties faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to the person and in an amount that 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 in the action. The court may at any time direct the receiver to give new bonds with new sureties with the same effect.

MCA 27-20-302

27-20-302. Powers of receiver

The receiver has, under the control of the court, the power to:

- (1) bring and defend actions in the receiver's own name, as receiver;
- (2) take and keep possession of the property;
- (3) receive rents, collect debts, and compound for and compromise the rents and debts;
- (4) make transfers; and
- (5) generally do acts respecting the property that the court may authorize.

MCA 27-20-303

27-20-303. Investment of funds

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.

MCA 27-20-304

27-20-304. Removal of receiver

The court may at any time remove a receiver.

NEBRASKA

Neb.Rev.St. § 25-1081

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.

Neb.Rev.St. § 25-1082

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.

Neb.Rev.St. § 25-1083

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.

Neb.Rev.St. § 25-1084

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.

Neb.Rev.St. § 25-1085

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.

Neb.Rev.St. § 25-1086

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.

Neb.Rev.St. § 25-1087

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.

Neb.Rev.St. § 25-1089

25-1088. Receivers; extent of representation

Every receiver shall be considered the receiver of any party to the suit, and no others.

Neb.Rev.St. § 25-1089

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](#).

Neb.Rev.St. § 25-1090

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.

Neb.Rev.St. § 25-1091

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.

Neb.Rev.St. § 25-1092

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.

Neb.Rev.St. § 76-1001

76-1001. Terms, defined

As used in sections 76-1001 to [76-1018](#), unless the context otherwise requires:

- (1) Beneficiary shall mean the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest;
- (2) Trustor shall mean the person conveying real property by a trust deed as security for the performance of an obligation;
- (3) Trust deed shall mean a deed executed in conformity with sections 76-1001 to [76-1018](#) and conveying real property to a trustee in a trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary;
- (4) Trustee shall mean a person to whom title to real property is conveyed by trust deed, or his successor in interest;
- (5) Real property shall mean any estate or interest in land, including all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements,

hereditaments, privileges and appurtenances thereunto belonging, used or enjoyed with said land, or any part thereof; and

(6) Trust property shall mean the real property conveyed by the trust deed.

Neb.Rev.St. § 76-1002

76-1002. Transfers in trust; real property; purpose

(1) Transfers in trust of real property may be made to secure (a) existing debts or obligations created simultaneously with the execution of the trust deed, (b) future advances necessary to protect the security, (c) any future advances to be made at the option of the parties, or (d) the performance of an obligation of any other person named in the trust deed to a beneficiary.

(2) Future advances necessary to protect the security shall include, but not be limited to, advances for payment of real property taxes, special assessments, prior liens, hazard insurance premiums, maintenance charges imposed under a condominium declaration or other covenant, and costs of repair, maintenance, or improvements.

(3)(a) Except as provided in subdivision (b) of this subsection, all items identified in subsection (1) of this section are equally secured by the trust deed from the time of filing the trust deed as provided by law and have the same priority as the trust deed over the rights of all other persons who acquire any rights in or liens upon the trust property subsequent to the time the trust deed was filed.

(b)(i) The trustor or his or her successor in title may limit the amount of optional future advances secured by the trust deed under subdivision (1)(c) of this section by filing a notice for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated. A copy of such notice shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed. The amount of such secured optional future advances shall be limited to not less than the amount actually advanced at the time of receipt of such notice by the beneficiary.

(ii) If any optional future advance is made by the beneficiary to the trustor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such trust property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed.

(iii) Subdivisions (b)(i) and (ii) of this subsection shall not limit or determine the priority of optional future advances as against construction liens governed by [section 52-139](#).

(4) The reduction to zero or elimination of the obligation evidenced by any of the transfers in trust authorized by this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law. All right, title, interest, and claim in and to the trust property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed in like manner as if acquired before execution of the trust deed.

Neb.Rev.St. § 76-1003

76-1003. Trustee; qualification

(1) The trustee of a trust deed shall be:

(a) A member of the Nebraska State Bar Association or a licensed real estate broker of Nebraska;

- (b) Any bank, building and loan association, savings and loan association, or credit union authorized to do business in Nebraska under the laws of Nebraska or the United States or an agency of the United States Department of Agriculture involved in lending;
 - (c) Any corporation authorized to conduct a trust business in Nebraska under the laws of Nebraska or the United States; or
 - (d) Any title insurer authorized to do business in Nebraska under the laws of Nebraska.
- (2) The trustee of a trust deed shall not be the beneficiary named in the trust deed unless the beneficiary is qualified to be a trustee under subdivision (1)(b) or (c) of this section.

Neb.Rev.St. § 76-1004

76-1004. Successor trustee; appointment by beneficiary; effect; substitution of trustee; recording; form

- (1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.
- (2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, the full legal description of the realty affected, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.
- (3) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated.
- (4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.
- (5) On and after April 3, 1997, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.
- (6) On and after March 4, 2010, there shall be no requirement for a beneficiary, in connection with the recording of the substitution of trustee, to provide notice of the substitution by mail, personal service, publication, or in any other manner to the trustee being replaced, and any recorded substitution filed for record prior to March 4, 2010, without having provided such notice, shall not be deemed incomplete or defective because such notice was not provided.
- (7) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by as trustor, in which is named beneficiary and as trustee, and filed for record, 20....

and recorded in book, page (or computer system reference), Records of County, Nebraska. The trust property affected is legally described as follows:

.....
.....
.....
.....

Signature

Neb.Rev.St. § 76-1005

76-1005. Power of sale conferred on trustee

A power of sale may be conferred upon the trustee which the trustee may exercise and under which the trust property may be sold in the manner provided in the Nebraska Trust Deeds Act after a breach of an obligation for which the trust property is conveyed as security, or at the option of the beneficiary a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale shall be expressly provided for in the trust deed.

Neb.Rev.St. § 76-1006

76-1006. Sale of trust property; notice of default

The power of sale conferred in the Nebraska Trust Deeds Act upon the trustee shall not be exercised until:

- (1) The trustee or the attorney for the trustee shall first file for record in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded and a description of the trust property, containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation;
- (2) If the trust property is used in farming operations carried on by the trustor, not in any incorporated city or village, the notice of default also sets forth:
 - (a) A statement that the default may be cured within two months of the filing for record of the notice of default and the obligation and trust deed may be thereby reinstated as provided in [section 76-1012](#);
 - (b) A statement of the amount of the entire unpaid principal sum secured by the trust deed, the amount of interest accrued thereon to and including the date the notice of default is signed by the trustee or the trustee's attorney, and the dollar amount of the per diem interest accruing from and after such date; and
 - (c) A statement of the amount of the unpaid principal which would not then be due had no default occurred; and
- (3) After the lapse of not less than one month, or two months if the notice of default is subject to subdivision (2) of this section, the trustee or the attorney for the trustee shall give notice of sale as provided in [section 76-1007](#).

Neb.Rev.St. § 76-1007

76-1007. Sale of trust property; notice; contents; time; place of sale

(1) The trustee or the attorney for the trustee shall give written notice of the time and place of sale particularly describing the property to be sold by publication of such notice, at least five times, once a week for five consecutive weeks, the last publication to be at least ten days but not more than thirty days prior to the sale, in some newspaper having a general circulation in each county in which the property to be sold, or some part thereof, is situated.

(2) The sale shall be held at the time and place designated in the notice of sale which shall be between the hours of nine a.m. and five p.m. and at the premises or at the courthouse of the county in which the property to be sold, or some part thereof, is situated.

(3) The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee's Sale

The following described property will be sold at public auction to the highest bidder at the ... door of the county courthouse in ..., County of ..., Nebraska, on ..., 20

(Name of Trustee)

Neb.Rev.St. § 76-1008

76-1008. Notice of default and sale; request for copies; mailing of notice; publication of notice of default; when

(1) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default thereunder, file for record in the office of the register of deeds of any county in which any part or parcel of the trust property is situated a duly acknowledged request for a copy of any such notice of default and notice of sale. The request shall set forth the name and address of the person or persons requesting copies of such notices and shall identify the trust deed by stating the names of the original parties thereto, the date of filing for record thereof, and the book and page or computer system reference where the same is recorded and shall be in substantially the following form:

Request is hereby made that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record ..., 20 ..., and recorded in book ..., page ..., (or computer system reference ...) Records of ... County, Nebraska, executed by ... as trustor, in which ... is named as beneficiary and ... as trustee, be mailed to ... (insert name) ... at ... (insert address)

Signature

(2) Not later than ten days after recordation of such notice of default, the trustee or beneficiary or the attorney for the trustee or beneficiary shall mail, by registered or certified mail with postage prepaid, a copy of such notice with the recording date shown thereon, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request. At least twenty days before the date of sale, the trustee or the attorney for the trustee shall mail, by registered or certified mail with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request.

(3) Each trust deed shall contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to each person who is a party thereto at the address of such person set forth therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as provided in this section.

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by such trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property or some part thereof is situated, such publication to commence not later than ten days after the filing for record of the notice of default.

(5) No request for a copy of any notice filed for record pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to trust property or be deemed notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title, or interest in or lien or claim upon the trust property.

Neb.Rev.St. § 76-1009

76-1009. Sale of trust property; public auction; bids; postponement of sale; notice

On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Neb.Rev.St. § 76-1010

76-1010. Sale of trust property; bid; payment; delivery of deed; recitals; effect; rights of trustor; terminated, when

(1) The purchaser at the sale shall forthwith pay the price bid, and upon receipt of payment, the trustee shall execute and deliver his or her deed to such purchaser. The trustee's deed may contain recitals of compliance with the requirements of the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein, including recitals concerning any mailing, personal delivery, and publication of the notice of default, any mailing and the publication and posting of notice of sale, and the conduct of sale. Such recitals shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and his or her successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or

his or her successors in interest subsequent to the execution of the trust deed. All right, title, interest, and claim of the trustor and his or her successors in interest, and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed, shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

Neb.Rev.St. § 76-1011

76-1011. Sale of trust property; proceeds of sale; disposition

The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, third, to the payment of junior trust deeds, mortgages, or other lienholders, and the balance, if any, to the person or persons legally entitled thereto.

Neb.Rev.St. § 76-1012

76-1012. Trust deed; default; reinstatement; recorded notice of default; cancellation; costs and expenses

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within two months if the notice of default is subject to subdivision (2) of section 76-1006, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one-half of one percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner provided in this section, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when

acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, 20....., and recorded in book, page, (or computer system reference) Records of County, Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, 20, and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee or attorney for trustee

(2) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, in the event the trustor or his or her successor in interest or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed makes payment of the entire amount then due under the terms of such trust deed and the obligation secured thereby at any time subsequent to the breach or default and prior to the sale of the trust property under [section 76-1010](#), the beneficiary shall be allowed to collect the costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, including the trustee's fees, costs, and expenses actually incurred, not to exceed the amount provided in the trust deed or the obligation secured thereby.

Neb.Rev.St. § 76-1013

76-1013. Sale of trust property; deficiency; action; judgment; amount

At any time within three months after any sale of property under a trust deed, as hereinabove provided, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in such action the complaint shall set forth the entire amount of the indebtedness which was secured by such trust deed and the amount for which such property was sold and the fair market value thereof at the date of sale, together with interest on such indebtedness from the date of sale, the costs and expenses of exercising the power of sale and of the sale. Before rendering judgment, the court shall find the fair market value at the date of sale of the property sold. The court shall not render judgment for more than the amount by which the amount of the indebtedness with interest and the costs and expenses of sale, including trustee's fees, exceeds the fair market value of the property or interest therein sold as of the date of the sale, and in no event shall the amount of said judgment, exclusive of interest from the date of sale, exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured thereby, including said costs and expenses of sale.

Neb.Rev.St. § 76-1014.01

76-1014.01. Trust deed; reconveyance required; when; failure to deliver; effect; damages

When the obligation secured by any trust deed has been satisfied, the beneficiary shall, upon receipt of a written request by the trustor or the trustor's successor in interest or designated representative or by the holder of a junior trust deed or junior mortgage, deliver to the trustor or trustor's successor in interest or designated representative a reconveyance in recordable form

duly executed by the trustee. The reconveyance may designate the grantee therein as the person or persons entitled thereto. The beneficiary under such trust deed shall, upon receipt of a written request, deliver to the trustor or his or her successor in interest, as directed in the written request, the trust deed and the note or other evidence of the obligation so satisfied. If a trustee fails or refuses to execute a reconveyance required by the beneficiary, the beneficiary shall appoint a successor trustee that will execute a reconveyance.

Any beneficiary who fails to deliver such a reconveyance within sixty days after receipt of such written request shall be liable to the trustor or his or her successor in interest, as the case may be, for five thousand dollars or actual damages resulting from such failure, whichever is greater. In any action against the beneficiary or trustee pursuant to this section, the court shall award, in addition to the foregoing amounts, court costs, including reasonable attorney's fees, and may further order the trustee to reconvey the property. Successor in interest of the trustor shall include the current owner of the property and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a beneficiary.

Neb.Rev.St. § 76-1015

76-1015. Sale of trust property; limitation of action

The trustee's sale of property under a trust deed shall be made within the period prescribed in [section 25-205](#) for the commencement of an action on the obligation secured by the trust deed unless the beneficiary elects to foreclose a trust deed in the manner provided for by law for the foreclosure of mortgages on real estate as provided in [section 76-1005](#), in which case the statute of limitations for the commencement of such action shall be the same as the statute of limitations for mortgages pursuant to [section 25-202](#).

Neb.Rev.St. § 76-1016

76-1016. Trust deed; transfer of debt secured by; effect

The transfer of any debt secured by a trust deed shall operate as a transfer of the security therefor.

Neb.Rev.St. § 76-1017

76-1017. Trust deed; instruments entitled to be recorded; assignment of beneficial interest

Any trust deed, substitution of trustee, assignment of a beneficial interest under a trust deed, notice of default, trustee's deed, reconveyance of the trust property and any instrument by which any trust deed is subordinated or waived as to priority, when acknowledged as provided by law, shall be entitled to be recorded, and shall, from the time of filing the same with the register of deeds for record, impart notice of the contents thereof, to all persons, including subsequent purchasers and encumbrancers for value, except that the recording of an assignment of a beneficial interest in the trust deed shall not in itself be deemed notice of such assignment to the trustor, his heirs or personal representatives, so as to invalidate any payment made by them, or any of them, to the person holding the note, bond or other instrument evidencing the obligation by the trust deed.

Neb.Rev.St. § 76-1018

76-1018. Act, how cited

[Sections 76-1001](#) to 76-1018 shall be known and may be cited as Nebraska Trust Deeds Act.

Neb.Rev.St. § 25-1527

25-1527. Sale of land; prior sale set aside; readvertisement

The officer holding such writ shall immediately advertise and sell said real estate, lands and tenements agreeable to the provisions of this chapter, and shall readvertise and sell the same in case a prior sale has been set aside by the district court or a judge thereof. In case the real estate offered for sale shall not be sold for want of bidders, the sheriff shall, at the request of the plaintiff, readvertise and again offer said property for sale under the said writ.

Neb.Rev.St. § 25-1528

25-1528. Successive executions or orders of sale; when authorized

Successive executions or orders of sale may issue at any time after the return of the officer not sold for want of bidders at the request of the plaintiff or his attorney.

Neb.Rev.St. § 25-1529

25-1529. Sale of land; notice; publication; effect of failure to publish

Lands and tenements taken in execution shall not be sold until the officer causes public notice of the time and place of sale to be given. The notice shall be given by publication once each week for four successive weeks in some newspaper printed in the county, or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by posting a notice on the courthouse door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such notice shall be set aside on motion, by the court to which the execution is returnable.

Neb.Rev.St. § 25-1530

25-1530. Foreclosure; redemption of land from levy and sale; rights of mortgagor; terminated, when

(1) The owners of any real estate against which a decree of foreclosure has been rendered in any court of record, or any real estate levied upon to satisfy any judgment or decree of any kind, may redeem the same from the lien of such decree or levy at any time before the sale of the same shall be confirmed by a court of competent jurisdiction by paying into court the amount of such decree or judgment together with all interests and costs. If such real estate has been sold to any person not a party plaintiff to the suit, the person so redeeming the same shall pay to such purchaser twelve percent interest on the amount of the purchase price from the date of the sale to the date of redemption or deposit the same with the clerk of the court where the decree or judgment was rendered.

(2) Subject to the right of redemption under subsection (1) of this section and the confirmation of the sale under [section 25-1531](#), all right, title, interest, and claim of the mortgagor and his or her successors in interest, and of all persons claiming by, through, and under the mortgagor and his or her successors in interest, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the mortgagor or his or her successors in interest subsequent to the execution of the mortgage, shall be deemed terminated as of the time the sheriff or master commissioner accepts the highest bid at the sale.

Neb.Rev.St. § 25-1531

25-1531. Mortgage foreclosure; confirmation of sale; grounds for refusing to confirm; time; motion; notice

If the court, upon the return of any writ of execution, or order of sale for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has in all respects been made in conformity to the provisions of this chapter and that the said property was sold for fair value, under the circumstances and conditions of the sale, or, that a subsequent sale would not realize a greater amount, the court shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of such sale, and an order that the officer make the purchaser a deed of such lands and tenements. Prior to the confirmation of sale pursuant to this section, the party seeking confirmation of sale shall, except in the circumstances described in [section 40-103](#), provide notice to the debtor informing him or her of the homestead exemption procedure available pursuant to Chapter 40, article 1. The notice shall be given by certified mailing at least ten days prior to any hearing on confirmation of sale. The officer on making such sale may retain the purchase money in his or her hands until the court shall have examined his or her proceedings as aforesaid, when he or she shall pay the same to the person entitled thereto, agreeable to the order of the court. If such sale pertains to mortgaged premises being sold under foreclosure proceedings and the amount of such sale is less than the amount of the decree rendered in such proceedings, the court may refuse to confirm such sale, if, in its opinion, such mortgaged premises have a fair and reasonable value equal to or greater than the amount of the decree. The court shall in any case condition the confirmation of such sale upon such terms or under such conditions as may be just and equitable. The judge of any district court may confirm any sale at any time after such officer has made his or her return, on motion and ten days' notice to the adverse party or his or her attorney of record, if made in vacation and such notice shall include information on the homestead exemption procedure available pursuant to Chapter 40, article 1. When any sale is confirmed in vacation the judge confirming the same shall cause his or her order to be entered on the journal by the clerk. Upon application to the court by the judgment debtor within sixty days of the confirmation of any sale confirmed pursuant to this section, such sale shall be set aside if the court finds that the party seeking confirmation of sale failed to provide notice to the judgment debtor regarding homestead exemption procedures at least ten days prior to the confirmation of sale as required by this section.

Neb.Rev.St. § 25-1537

25-1537. Lands unsold; additional writs

If lands and tenements levied on as aforesaid are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

Neb.Rev.St. § 25-1538

25-1538. Several writs of execution; levy on real property; how made; preference

In all cases when two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued shall require the sheriff, or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said execution, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor whose execution may, by the provisions of this chapter, be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient to satisfy the same. In all cases where two or more

executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of real property of the judgment debtor or debtors, when the same may be divided without material injury; and if the real property of said debtors will not be sufficient to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution as will bear the same proportion in value to the whole as the amount due on the execution bears to the amount of all the executions chargeable thereon.

Neb.Rev.St. § 25-1539

25-1539. Sale of lands and tenements; deed by sheriff's successor

If the term of service of the sheriff, or other officer, who has made or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or officer shall be absent, or be rendered unable, by death or otherwise, to make a deed of conveyance of the same, any succeeding sheriff or other officer, on receiving a certificate from the court from which the execution issued for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representative, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the sheriff or other officer who made the sale had executed the same.

Neb.Rev.St. § 25-1540

25-1540. Sale on execution; disposition of proceeds

If on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution, or his legal representatives.

Neb.Rev.St. § 25-1541

25-1541. Sale of lands or tenements; reversal of judgment; title of purchaser; restitution

If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but, in such case, restitution shall be made by the judgment creditor, of the money for which such lands or tenements were sold, with lawful interest from the day of sale.

Neb.Rev.St. § 25-1542

25-1542. Judgment lien; when lost

No judgment on which execution has not been taken out and levied before the expiration of five years after its entry shall operate as a lien upon the estate of any debtor to the preference of any other bona fide judgment creditor or purchaser, but when judgment has been or may be rendered in the Court of Appeals or Supreme Court and any special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for five years after the first day of the next term of the district court to which such mandate may be directed. Nothing in this section shall be construed to defeat the lien of any judgment creditor who fails to take out execution and cause a levy to be made as provided in this section when such failure is

occasioned by appeal, proceedings in error, or injunction or by a vacancy in the office of sheriff and coroner or the inability of such officers until one year after such disability is removed.

Neb.Rev.St. § 25-1543

25-1543. Writ of execution; when returnable

The sheriff or other officer to whom any writ of execution is directed shall return such writ to the court to which the writ is returnable as soon as practicable after the writ has been served.

Neb.Rev.St. § 25-1544

25-1544. Judgment against principal and surety; how entered; how executed

In all cases where judgment is rendered in any court of record within this state upon any instrument in writing in which two or more persons are jointly and severally bound, and it shall be made to appear to the court by parol or other testimony that one or more of said persons so bound signed the same as surety or bail for his or their codefendant, it shall be the duty of the clerk of said court in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. The clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Neb.Rev.St. § 25-1545

25-1545. Execution; sheriff; amercement; causes; procedure

If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent or attorney of record, all money by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in [section 25-1531](#); or shall neglect or refuse on demand made by the defendant, his agent or attorney of record, to pay over all money by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or officer shall, on motion in court and two days' notice thereof in writing, be amerced in the amount of said debt, damages and costs, with ten percent thereon, to and for the use of said plaintiff or defendant, as the case may be.

Neb.Rev.St. § 25-1546

25-1546. Clerk of court; amercement; causes; procedure

If any clerk of the court shall neglect or refuse, on demand made by the persons entitled thereto, his agent, or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him

and his sureties shall be the same as provided for in [section 25-1545](#) against sheriffs and their sureties.

Neb.Rev.St. § 25-1547

25-1547. Amercement; amount; limit

When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten percent thereon.

Neb.Rev.St. § 25-1548

25-1548. Execution to another county; return by mail; effect upon liability of officer

When execution shall be issued in any county in this state, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to enclose such execution by mail to the clerk of the court who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty if it does not reach the office in due time.

Neb.Rev.St. § 25-1549

25-1549. Amercement; motion; notice; effect of entry; transmission of money

No sheriff shall forward by mail any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to the first day of the term at which such motion shall be made. All amercements, so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

Neb.Rev.St. § 25-1550

25-1550. Amercement; judgment; liability of sureties; execution

Every surety of any sheriff or other officer may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment, at his election.

Neb.Rev.St. § 25-1551

25-1551. Amercement; execution on original judgment; rights of officer

In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

Neb.Rev.St. § 25-1552

25-1552. Personal property except wages; debtors; claim of exemption; procedure

Each natural person residing in this state shall have exempt from forced sale on execution the sum of two thousand five hundred dollars in personal property, except wages. The provisions of this section do not apply to the exemption of wages, that subject being fully provided for by [section 25-1558](#). In proceedings involving a writ of execution, the exemption from execution under this section shall be claimed in the manner provided by [section 25-1516](#). The debtor desiring to claim an exemption from execution under this section shall, at the time the request for hearing is filed, file a list of the whole of the property owned by the debtor and an indication of the items of property which he or she claims to be exempt from execution pursuant to this section and [section 25-1556](#), along with a value for each item listed. The debtor or his or her authorized agent may select from the list an amount of property not exceeding the value exempt from execution under this section according to the debtor's valuation or the court's valuation if the debtor's valuation is challenged by a creditor.

Neb.Rev.St. § 25-1553

25-1553. Federal or state earned income tax credit refund; when exempt

In bankruptcy and in the collection of a money judgment, the full amount of any federal or state earned income tax credit refund shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors.

Neb.Rev.St. § 25-1555

25-1555. Exemptions; not applicable to tax sales

Nothing in this chapter shall be considered as exempting any real or personal property from levy and sale for taxes.

Neb.Rev.St. § 25-1505

25-1505. Stay of execution; maximum period

No stay of execution or order of sale upon any judgment or decree shall be granted for a longer time than nine months after the entry of such judgment or decree.

Neb.Rev.St. § 25-1506

25-1506. Order of sale of mortgaged premises; how stayed; length of stay

The order of sale on all decrees for the sale of mortgaged premises shall be stayed for the period of nine months after the entry of such decree, whenever the defendant shall, within twenty days after the entry of such decree, file with the clerk of the court a written request for the same. If the defendant makes no such request within twenty days, the order of sale may issue immediately after the expiration thereof. As to any mortgage executed after September 28, 1959, if the original maturity of indebtedness secured by the mortgage is more than twenty years after the date of the filing of the complaint to foreclose the mortgage and the mortgage covered a lot or lots, or any part thereof, in a regularly platted subdivision, or parcel of residential property not exceeding three acres in area, the stay period shall be three months, and, as to such a mortgage executed after October 9, 1961, if such original maturity is more than ten years but not more than twenty years from and after the date of the filing of the foreclosure complaint, the stay period shall be six months.

Neb.Rev.St. § 25-1507

25-1507. Execution; how stayed

On all judgments for the recovery of money only, except those rendered in any court on an appeal or writ of error thereto or against any officer or person or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution if the defendant therein shall, within twenty days after the entry of judgment, procure two or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs, from the time of entering judgment until paid as follows: (1) If the sum for which judgment was rendered, exclusive of costs, does not exceed fifty dollars, three months; (2) if the sum for which judgment was rendered, exclusive of costs, exceeds fifty dollars and does not exceed one hundred dollars, six months; and (3) if the sum for which judgment was rendered, exclusive of costs, exceeds one hundred dollars, nine months.

Neb.Rev.St. § 25-1508

25-1508. Stay bonds; approval; justification of sureties

Officers approving stay bonds shall require the affidavits of the signers of such bonds that they own real estate not exempt from execution, and aside from encumbrance, to the value of twice the amount of the judgment.

Neb.Rev.St. § 25-1509

25-1509. Stay of execution; surety on stay bond excepted; no appeal after stay

No proceedings in errors or appeal shall be allowed after such stay has been taken, nor shall a stay be taken on a judgment entered as herein contemplated, against one who is surety in the stay of execution.

Neb.Rev.St. § 25-1510

25-1510. Stay of execution; sureties; approval; bond tantamount to judgment confessed

The sureties for the stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket, as in the case of other judgments.

Neb.Rev.St. § 25-1511

25-1511. Stay of execution; recall of writ; duties of clerk and sheriff

When the surety is entered after execution issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution, with his doings thereon.

Neb.Rev.St. § 25-1512

25-1512. Stay of execution; property and undertakings relinquished

All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer upon stay of execution being entered.

Neb.Rev.St. § 25-1513

25-1513. Stay of execution; expiration; writ to issue; duty of clerk

At the expiration of the stay the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein.

Neb.Rev.St. § 25-1514

25-1514. Stay of execution; judgment liens not released

Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. The officer holding the execution shall return thereon what amount was made from the principal debtor, and how much from the sureties.

Neb.Rev.St. § 25-1515

25-1515. Judgment; when dormant

If execution is not sued out within five years after the date of entry of any judgment that now is or may hereafter be rendered in any court of record in this state, or if five years have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment, and all taxable costs in the action in which such judgment was obtained, shall become dormant and shall cease to operate as a lien on the estate of the judgment debtor.

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N.R.S. 32.010

32.010. Cases in which receiver may be appointed

A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

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 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 the 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 condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the 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 in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.
5. In the cases 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.

3 N.R.S. 32.015

2.015. Additional cases in which receiver may be appointed

1. In addition to the cases enumerated in [NRS 32.010](#), a court or judge may appoint a receiver in an action brought by a secured lender to enforce the right provided in [NRS 40.507](#), or a similar right provided in a mortgage, to enter and inspect real collateral to determine the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it. A right provided in a mortgage is subject to the same limitations and requirement of notice as are provided in [NRS 40.507](#).
2. As used in this section, "hazardous substance," "release" and "secured lender" have the meanings ascribed to them in [NRS 40.504](#), [40.505](#) and [40.506](#), respectively.

N.R.S. 32.020

32.020. Reversion and disposition of unclaimed dividends in receivership

1. In any receivership proceeding instituted in which a dividend has been declared and ordered paid to creditors, any dividend which remains unclaimed for 3 years reverts to the general fund of the estate and must be applied as follows:
 - (a) To the payment of costs and expenses of the administration of the estate and receivership.
 - (b) To a new dividend distributed to creditors whose claims have been allowed but not paid in full. After those claims have been paid in full, the balance is presumed abandoned under chapter 120A of NRS.
2. This section applies to any receivership proceeding which may be brought, and includes any bank, banking corporation, corporation, copartnership, company, association or natural person.

N.R.S. 107A.260

107A.260. Enforcement by appointment of receiver

1. An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:
 - (a) The assignor is in default and:
 - (1) The assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
 - (2) It appears likely that the real property may not be sufficient to satisfy the secured obligation;
 - (3) The assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
 - (4) A subordinate assignee of rents obtains the appointment of a receiver for the real property; or
 - (b) Other circumstances exist that would justify the appointment of a receiver under law of this State other than this chapter.
2. An assignee may file a petition for the appointment of a receiver in connection with an action:
 - (a) To foreclose the security instrument;
 - (b) For specific performance of the assignment;
 - (c) Seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or
 - (d) Otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.
3. An assignee that files a petition under subsection 2 shall also give a copy of the petition in the manner specified in [NRS 107A.220](#) to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.
4. If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.
5. From the date of its appointment, a receiver is entitled to collect rents as provided in subsection 2 of [NRS 107A.250](#). The receiver also has the authority provided in the order of appointment and law of this State other than this chapter.
6. The following rules govern priority among receivers:
 - (a) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.
 - (b) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

N.R.S. 40.005

40.005. Zoning requirements to be considered by court

In any proceeding involving disposition of land the court shall consider lot size and other applicable zoning requirements before ordering a physical division of the land.

N.R.S. 40.010

40.010. Actions may be brought against adverse claimants

An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim.

N.R.S. 40.020

40.020. Plaintiff not entitled to costs on default judgment or disclaimer

If the defendant in such action disclaim in the defendant's answer any interest or estate in the property, or suffer judgment to be taken against the defendant without answer, the plaintiff shall not recover costs.

N.R.S. 40.030

40.030. Plaintiff may recover damages for property withheld where plaintiff's right terminated during pendency of action

In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced but it appears that the plaintiff's right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

N.R.S. 40.040

40.040. Value of permanent improvements to be allowed as setoff

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom the defendant claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a setoff against such damages.

N.R.S. 40.050

40.050. Mortgage not deemed conveyance

A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to take possession of the real property without a foreclosure and sale.

N.R.S. 40.060

40.060. Court may enjoin injury to property during foreclosure

The court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance.

N.R.S. 40.070

40.070. Damages may be recovered for injury to possession after sale and before delivery

When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to the purchaser's interest, may, after the purchaser's estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

N.R.S. 40.080

40.080. Action not to be prejudiced by alienation pending suit

An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

N.R.S. 40.090

40.090. Action by person in adverse possession: Verified complaint; defendants; notice of pending litigation

1. An action may be brought to determine the adverse claims to and clouds upon title to real property by a person who, personally or in combination with the person's predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for more than 15 years prior to the filing of the complaint, claiming to own the same in fee, or by any other freehold estate, against the whole world, and who has, personally or through the person's predecessors in interest, paid all taxes of every kind levied or assessed and due against the property during the period of 5 years next preceding the filing of the complaint, except that where clouds upon title to real property have been created by such person, and the action is brought to remove such clouds, or any of them, such period of actual, exclusive and adverse possession of such property shall be for more than 10 years. The action shall be commenced by the filing of a verified complaint averring the matters above enumerated.

2. The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title, lien or cloud in or on the land described in the complaint adverse to plaintiff's ownership; and the complaint may also include as defendants any and all other persons, unknown, claiming any estate, right, title, interest or lien in such lands, or cloud upon the title of plaintiff thereto; and the plaintiff may describe such unknown defendants in the complaint as follows: "Also all other persons unknown claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

3. Within 10 days after the filing of the complaint, plaintiff shall file or cause to be filed in the office of the county recorder of the county where the property is situated, a notice of the pendency of the action containing the matters required by [NRS 14.010](#).

N.R.S. 40.100

40.100. Action by person in adverse possession: Issuance, service and posting of summons; rights of unknown persons

1. Within 1 year after the filing of the complaint, as required by [NRS 40.090](#), a summons must be issued in the manner and form prescribed in the Nevada Rules of Civil Procedure. In addition to other requirements, the summons shall contain a description of the property described in the complaint. In the summons the unknown defendants shall be designated as in the complaint. Service of summons, whether personal or otherwise, shall be effected in the manner prescribed in the Nevada Rules of Civil Procedure; and the times for completion of service and appearance by the defendant shall be as prescribed therein.

2. Within 30 days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place, on each separate parcel of the property described in the complaint, and each parcel of the land upon which a copy of the summons is posted shall be deemed to be in the possession of the court for all the purposes of and pending the determination of the action. All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named, upon whom service is made by publication or

personally, and the action shall proceed against such unknown persons in the same manner as against the defendants who are named, upon whom service is made by publication or personally, and with like effect; and any such unknown person who has or claims to have any right, title, estate, lien or interest in the property, or cloud on the title thereto, adverse to plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and anyone claiming title under the unknown person shall be concluded by the judgment in such action as effectually as if the action had been brought against the person by his or her name and personal service of process obtained, notwithstanding any such unknown person may be under legal disability.

N.R.S. 40.110

40.110. Court to hear case; must not enter judgment by default; effect of final judgment

1. When the summons has been served as provided in [NRS 40.100](#) and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession and receive such legal evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law. The court, before proceeding to hear the case, must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

2. The judgment after it has become final shall be conclusive against all the persons named in the summons and complaint who have been served personally, or by publication, and against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the State of Nevada or the United States. The judgment shall have the effect of a judgment in rem except as against the State of Nevada and the United States; and the judgment shall not bind or be conclusive against any person claiming any recorded estate, title, right, possession or lien in or to the property under the plaintiff or the plaintiff's predecessors in interest, which claim, lien, estate, title, right or possession has arisen or been created by the plaintiff or the plaintiff's predecessor in interest within 10 years prior to the filing of the complaint.

N.R.S. 40.120

40.120. Remedy is cumulative

The remedy provided in [NRS 40.090](#), [40.100](#) and [40.110](#) shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding now allowed by law.

N.R.S. 40.130

40.130. Adverse action on mining claim

In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the Government of the United States by either of the parties to such action for a patent for the mining claim, vein or lode, it shall only be necessary to confer jurisdiction on the court to try the action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein or lode has been made, and that the parties to the action are claiming such mining claim, vein or lode, or some part thereof, or the right of possession thereof.

N.R.S. 40.140

40.140. Nuisance defined; action for abatement and damages; exceptions

1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog;

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by the board of health; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog; or

(d) A building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang, is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range in operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range that begins operation after October 1, 1997.

A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

4. As used in this section:

(a) "Board of health" has the meaning ascribed to it in [NRS 439.4797](#).

(b) "Controlled substance analog" has the meaning ascribed to it in [NRS 453.043](#).

(c) "Criminal gang" has the meaning ascribed to it in [NRS 193.168](#).

(d) "Immediate precursor" has the meaning ascribed to it in [NRS 453.086](#).

(e) “Shooting range” means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

N.R.S. 40.150

40.150. Action for waste; judgment may be for treble damages

If a guardian, tenant for life or years, joint tenant or tenant in common of real property commit waste thereon, any person aggrieved by the waste may bring an action against the guardian or tenant who committed the waste, in which action there may be judgment for treble damages.

N.R.S. 40.160

40.160. Action for trespass for cutting or carrying away trees or wood; treble damages

1. Any person who cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

2. Nothing in subsection 1 of this section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

N.R.S. 40.170

40.170. Damages in actions for forcible or unlawful entry may be trebled

1. If a person recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or any uncultivated or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

2. As used in this section, “actual damages” means damages to real property and personal property.

N.R.S. 40.180

40.180. Manner of working mine or mining claim; assessment of damages

1. Any person being the owner of, or in possession under any lease or contract for the working of any mine or mines within this state, shall have the right to institute and maintain an action for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person who may be the owner, or in possession of and working such mine or mines under a lease or contract, and to prevent the continuance of working and managing such mine or mines in such manner as to hinder, injure, or in anywise endanger the safety of any mine or mines adjacent or adjoining thereto.

2. Any such owner of, or person in the possession of, any mine or mining claim, who shall enter upon or into, in any manner, any mine or mining claim, the property of another, and mine, extract, excavate or carry away any valuable mineral therefrom shall be liable to the owner of any such mine or mines trespassed upon in the amount of the value of all such mineral mined, extracted, excavated or carried away, and for all other damages, and in the absence of a showing to the contrary, the value of all such mineral mined, extracted, excavated or carried away shall be presumed to be twice the amount of the gross value of the same ascertained by an average assay

of the excavated material or the ledge from which it was taken. If such trespass was made in bad faith, such damages may be trebled.

N.R.S. 40.190

40.190. Continuation of judgment lien

Any judgment obtained for damages under the provisions of [NRS 40.180](#) shall become a lien upon all the property of the judgment debtor not exempt from execution in the State of Nevada, owned by the judgment debtor, or which may afterwards be acquired, as is now provided for by law, which lien shall continue 2 years, unless the judgment be sooner satisfied.

N.R.S. 40.200

40.200. Application for order of survey; notice and order; report of survey; costs of and damages caused by survey

1. Any person named in [NRS 40.180](#) and [40.190](#) shall have the right to apply for and obtain from any district court, or the judge thereof, an order of survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the party making such application, and that the party has reason to believe, and does believe, that the parties complained of, their agent, or employees, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant.

2. Upon the filing of the affidavit as prescribed in subsection 1, the court or judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than 5 nor more than 10 days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court and report the result and conclusions to the court, which report shall be filed with the clerk of the court.

3. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in [NRS 40.180](#), by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed against the defendant as other costs in the suit.

4. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

N.R.S. 40.210

40.210. Order allowing party to survey and measure land in dispute; contents and service of order; liability for unnecessary injury

1. The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make

survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

2. The order shall describe the property; a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property the party shall be liable therefor.

N.R.S. 40.215

40.215. Definitions

As used in NRS 40.215 to 40.425, inclusive, unless the context requires otherwise:

1. "Mobile home" means every vehicle, including equipment, which is constructed, reconstructed or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a dwelling or sleeping place and which has no foundation other than wheels, jacks, skirting or other temporary support.

2. "Mobile home lot" means a portion of land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

3. "Mobile home park" or "park" means an area or tract of land where two or more mobile homes or mobile home lots are rented or held out for rent. "Mobile home park" or "park" does not include those areas or tracts of land, whether within or outside of a park, where the lots are held out for rent on a nightly basis.

4. "Premises" includes a mobile home.

5. "Recreational vehicle" means a vehicular structure primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.

6. "Recreational vehicle lot" means a portion of land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

7. "Recreational vehicle park" means an area or tract of land where lots are rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

N.R.S. 40.220

40.220. Entry to be made only when legal and in peaceable manner

No entry shall be made into any lands, tenements or other possessions but in cases where entry is given by law; and in such cases, only in a peaceable manner, not with strong hand nor with multitude of people.

N.R.S. 40.240

40.240. Forcible detainer defined

Every person is guilty of a forcible detainer who either:

1. By force, or by menaces or threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who, in the nighttime, or during the absence of the occupant of any real property, unlawfully enters thereon, and who, after demand made for the surrender thereof, refuses for a period of 3 days to surrender the same to such former occupant. The occupant of real property within the meaning of this subsection is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

N.R.S. 40.250

40.250. Unlawful detainer: Possession after expiration of term

A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

N.R.S. 40.251

40.251. Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older person or person with a disability entitled to extension of period of possession upon request

1. A tenant of real property, a recreational vehicle or a mobile home for a term less than life is guilty of an unlawful detainer when having leased:

(a) Real property, except as otherwise provided in this section, or a mobile home for an indefinite time, with monthly or other periodic rent reserved, the tenant continues in possession thereof, in person or by subtenant, without the landlord's consent after the expiration of a notice of:

(1) For tenancies from week to week, at least 7 days;

(2) Except as otherwise provided in subsection 2, for all other periodic tenancies, at least 30 days; or

(3) For tenancies at will, at least 5 days.

(b) A dwelling unit subject to the provisions of chapter 118A of NRS, the tenant continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(1) The term of the rental agreement or its termination and, except as otherwise provided in subparagraph (2), the expiration of a notice of:

(I) At least 7 days for tenancies from week to week; and

(II) Except as otherwise provided in subsection 2, at least 30 days for all other periodic tenancies; or

(2) A notice of at least 5 days where the tenant has failed to perform the tenant's basic or contractual obligations under chapter 118A of NRS.

(c) A mobile home lot subject to the provisions of chapter 118B of NRS, or a lot for a recreational vehicle in an area of a mobile home park other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [NRS 40.215](#), the tenant continues in possession, in person or by subtenant, without the landlord's consent:

(1) After notice has been given pursuant to [NRS 118B.115](#), [118B.170](#) or [118B.190](#) and the period of the notice has expired; or

(2) If the person is not a natural person and has received three notices for nonpayment of rent within a 12-month period, immediately upon failure to pay timely rent.

(d) A recreational vehicle lot, the tenant continues in possession, in person or by subtenant, without the landlord's consent, after the expiration of a notice of at least 5 days.

2. Except as otherwise provided in this section, if a tenant with a periodic tenancy pursuant to paragraph (a) or (b) of subsection 1, other than a tenancy from week to week, is 60 years of age or older or has a physical or mental disability, the tenant may request to be allowed to continue in possession for an additional 30 days beyond the time specified in subsection 1 by submitting a

written request for an extended period and providing proof of the tenant's age or disability. A landlord may not be required to allow a tenant to continue in possession if a shorter notice is provided pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Any notice provided pursuant to paragraph (a) or (b) of subsection 1 must include a statement advising the tenant of the provisions of subsection 2.

4. If a landlord rejects a request to allow a tenant to continue in possession for an additional 30 days pursuant to subsection 2, the tenant may petition the court for an order to continue in possession for the additional 30 days. If the tenant submits proof to the court that the tenant is entitled to request such an extension, the court may grant the petition and enter an order allowing the tenant to continue in possession for the additional 30 days. If the court denies the petition, the tenant must be allowed to continue in possession for 5 calendar days following the date of entry of the order denying the petition.

N.R.S. 40.2512

40.2512. Unlawful detainer: Possession after default in payment of rent

A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of a mobile home lot, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

N.R.S. 40.2514

40.2514. Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws

A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
 2. Commits or permits waste thereon;
 3. Sets up or carries on therein or thereon any unlawful business;
 4. Suffers, permits or maintains on or about the premises any nuisance that consists of conduct or an ongoing condition which constitutes an unreasonable obstruction to the free use of property and causes injury and damage to other tenants or occupants of that property or adjacent buildings or structures; or
 5. Violates any of the provisions of [NRS 453.011](#) to [453.552](#), inclusive, except [NRS 453.336](#), therein or thereon,
- and remains in possession after service upon the tenant of 3 days' notice to quit.

N.R.S. 40.2516

40.2516. Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture

A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in [NRS 40.250](#) to [40.252](#), inclusive, and [NRS 40.254](#), and after notice in writing, requiring in the alternative the performance of the

condition or covenant or the surrender of the property, served upon the tenant, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplished for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

N.R.S. 40.252

40.252. Unlawful detainer: Contractual provisions void if contrary to specified periods of notice; notice to quit or surrender by colessor is valid unless showing other colessors did not authorize notice

For the purposes of [NRS 40.250](#) to 40.252, inclusive, and [NRS 40.254](#):

1. It is unlawful for a landlord to attempt by contract or other agreement to shorten the specified periods of notice and any such contract or agreement is void.
2. Notice to quit or surrender the premises which was given by one colessor of real property or a mobile home is valid unless it is affirmatively shown that one or more of the other colessors did not authorize the giving of the notice.

N.R.S. 40.253

40.253. Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent

1. Except as otherwise provided in subsection 10, in addition to the remedy provided in [NRS 40.2512](#) and [40.290](#) to [40.420](#), inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or the landlord's agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

- (a) At or before noon of the fifth full day following the day of service; or
- (b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

As used in this subsection, "day of service" means the day the landlord or the landlord's agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or the landlord's agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of [NRS 40.280](#). If the notice cannot be delivered in person, the landlord or the landlord's agent:

- (a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of [NRS 40.280](#). The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when the tenant took possession of the premises, that the landlord or the landlord's agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or the landlord's agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant:

(1) Of the tenant's right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that the tenant has tendered payment or is not in default in the payment of the rent;

(2) That if the court determines that the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant, directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order; and

(3) That, pursuant to [NRS 118A.390](#), a tenant may seek relief if a landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block the tenant's entry upon the premises or willfully interrupts or causes or permits the interruption of an essential service required by the rental agreement or chapter 118A of NRS.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or the landlord's agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or the landlord's agent may apply by affidavit of complaint for eviction to the justice court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with [NRS 40.280](#).

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or the landlord's agent, and except when the landlord is prohibited pursuant to [NRS 118A.480](#), the landlord or the landlord's agent may, in a

peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to [NRS 40.290 to 40.420](#), inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which the tenant may be entitled. If the alleged unlawful detainer was based upon subsection 5 of [NRS 40.2514](#), the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with [NRS 40.251](#).

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to [NRS 118A.460](#) or [118C.230](#) for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

- (a) The tenant has vacated or been removed from the premises; and
- (b) A copy of those charges has been requested by or provided to the tenant, whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

- (a) Determine the costs, if any, claimed by the landlord pursuant to [NRS 118A.460](#) or [118C.230](#) and any accumulating daily costs; and
- (b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or the landlord's agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in [NRS 118A.240](#).

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [NRS 40.215](#).

N.R.S. 40.254

40.254. Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property

Except as otherwise provided by specific statute, in addition to the remedy provided in [NRS 40.251](#) and in [NRS 40.290 to 40.420](#), inclusive, when the tenant of a dwelling unit which is subject to the provisions of chapter 118A of NRS, part of a low-rent housing program operated by a public housing authority, a mobile home or a recreational vehicle is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in [NRS 40.253](#) except that:

1. Written notice to surrender the premises must:
 - (a) Be given to the tenant in accordance with the provisions of [NRS 40.280](#);
 - (b) Advise the tenant of the court that has jurisdiction over the matter; and
 - (c) Advise the tenant of the tenant's right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that the tenant is not guilty of an unlawful detainer.
2. The affidavit of the landlord or the landlord's agent submitted to the justice court or the district court must contain:
 - (a) The date when the tenancy commenced, the term of the tenancy, and, if any, a copy of the rental agreement.
 - (b) The date when the tenancy or rental agreement allegedly terminated.
 - (c) The date when the tenant became subject to the provisions of [NRS 40.251 to 40.2516](#), inclusive, together with any supporting facts.
 - (d) The date when the written notice was given, a copy of the notice and a statement that notice was served in accordance with [NRS 40.280](#).
 - (e) A statement that the claim for relief was authorized by law.
3. If the tenant is found guilty of unlawful detainer as a result of the tenant's violation of any of the provisions of [NRS 453.011 to 453.552](#), inclusive, except [NRS 453.336](#), the landlord is entitled to be awarded any reasonable attorney's fees incurred by the landlord or the landlord's agent as a result of a hearing, if any, held pursuant to subsection 6 of [NRS 40.253](#) wherein the tenant contested the eviction.

N.R.S. 40.255

40.255. Removal of person holding over after 3-day notice to quit; circumstances authorizing removal; exception and additional notice required for occupying tenants and subtenants of property sold as residential foreclosure

1. Except as otherwise provided in subsections 2 and 7, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon the person may be removed as prescribed in [NRS 40.290 to 40.420](#), inclusive:

- (a) Where the property or mobile home has been sold under an execution against the person, or against another person under whom the person claims, and the title under the sale has been perfected;
- (b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by the person, or by another person under whom the person claims, and the title under the sale has been perfected;
- (c) Where the property or mobile home has been sold under a power of sale granted by [NRS 107.080](#) to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected; or

- (d) Where the property or mobile home has been sold by the person, or by another person under whom the person claims, and the title under the sale has been perfected.
2. If the property has been sold as a residential foreclosure, a tenant or subtenant in actual occupation of the premises, other than a person whose name appears on the mortgage or deed, who holds over and continues in possession of real property or a mobile home in any of the cases described in paragraph (b) or (c) of subsection 1 may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive, after receiving a notice of the change of ownership of the real property or mobile home and after the expiration of a notice period beginning on the date the notice was received by the tenant or subtenant and expiring:
- (a) For all periodic tenancies with a period of less than 1 month, after not less than the number of days in the period; and
- (b) For all other periodic tenancies or tenancies at will, after not less than 60 days.
3. During the notice period described in subsection 2:
- (a) The new owner has the rights, obligations and liabilities of the previous owner or landlord pursuant to chapter 118A of NRS under the lease or rental agreement which the previous owner or landlord entered into with the tenant or subtenant regarding the property; and
- (b) The tenant or subtenant continues to have the rights, obligations and liabilities that the tenant or subtenant had pursuant to chapter 118A of NRS under the lease or rental agreement which the tenant or subtenant entered into with the previous owner or landlord regarding the property.
4. The notice described in subsection 2 must contain a statement:
- (a) Providing the contact information of the new owner to whom rent should be remitted;
- (b) Notifying the tenant or subtenant that the lease or rental agreement the tenant or subtenant entered into with the previous owner or landlord of the property continues in effect through the notice period described in subsection 2; and
- (c) Notifying the tenant or subtenant that failure to pay rent to the new owner or comply with any other term of the agreement or applicable law constitutes a breach of the lease or rental agreement and may result in eviction proceedings.
5. If the property has been sold as a residential foreclosure in any of the cases described in paragraph (b) or (c) of subsection 1, no person may enter a record of eviction for a tenant or subtenant who vacates a property during the notice period described in subsection 2.
6. If the property has been sold as a residential foreclosure in any of the cases described in paragraphs (b) or (c) of subsection 1, nothing in this section shall be deemed to prohibit:
- (a) The tenant from vacating the property at any time before the expiration of the notice period described in subsection 2 without any obligation to the new owner of a property purchased pursuant to a foreclosure sale or trustee's sale; or
- (b) The new owner of a property purchased pursuant to a foreclosure sale or trustee's sale from:
- (1) Negotiating a new purchase, lease or rental agreement with the tenant or subtenant; or
- (2) Offering a payment to the tenant or subtenant in exchange for vacating the premises on a date earlier than the expiration of the notice period described in subsection 2.
7. This section does not apply to the tenant of a mobile home lot in a mobile home park.
8. As used in this section, "residential foreclosure" means the sale of a single family residence pursuant to [NRS 40.430](#) or under a power of sale granted by [NRS 107.080](#). As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

N.R.S. 40.260

40.260. Tenant of agricultural lands may hold over if not notified

In all cases of tenancy upon agricultural land where the tenant has held over and retained possession for more than 60 days after the expiration of the tenant's term, without any demand of possession or notice to quit by the landlord, or the successor in estate of the landlord, if any there be, the tenant shall be deemed to be holding by permission of the landlord, or the successor in the estate of the landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during the year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

N.R.S. 40.270

40.270. Tenant has similar remedies against subtenant

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to any subtenant in case of the subtenant's unlawful detention of the premises let by the tenant to the subtenant.

N.R.S. 40.280

40.280. Service of notices to quit; proof required before issuance of order to remove

1. Except as otherwise provided in [NRS 40.253](#), the notices required by [NRS 40.251](#) to [40.260](#), inclusive, may be served:

- (a) By delivering a copy to the tenant personally, in the presence of a witness;
- (b) If the tenant is absent from the tenant's place of residence or from the tenant's usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's place of residence or place of business; or
- (c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of [NRS 40.253](#), a landlord shall file with the court a proof of service of any notice required by that section. Before a person may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive, a landlord shall file with the court proof of service of any notice required pursuant to [NRS 40.255](#). Except as otherwise provided in subsection 4, this proof must consist of:

- (a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;
- (b) A certificate of mailing issued by the United States Postal Service; or
- (c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

- (a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or the landlord's agent; or
- (b) The endorsement of a sheriff or constable stating the:
 - (1) Time and date the request for service was made by the landlord or the landlord's agent;

- (2) Time, date and manner of the service; and
- (3) Fees paid for the service.

N.R.S. 40.290

40.290. Parties defendant; persons bound by judgment

No person other than the tenant of the premises and the subtenant, if there be one, in actual occupation of the premises when the action is commenced, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against the party. In case a person has become subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

N.R.S. 40.300

40.300. Contents of complaint; issuance and service of summons; temporary writ of restitution; notice, hearing and bond

1. The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which the plaintiff seeks to recover, and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises or both. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.
2. The summons shall be issued and served as in other cases, but the court, judge or justice of the peace may shorten the time within which the defendant shall be required to appear and defend the action, in which case the officer or person serving the summons shall change the prescribed form thereof to conform to the time of service as ordered; but where publication is necessary the court shall direct publication for a period of not less than 1 week.
3. At any time after the filing of the complaint and issuance of summons, the court, upon application therefor, may issue a temporary writ of restitution; provided:
 - (a) That the temporary writ of restitution shall not issue ex parte but only after the issuance and service of an order to show cause why a temporary writ of restitution shall not be issued and after the defendant has been given an opportunity to oppose the issuance of the temporary writ of restitution.
 - (b) That the temporary writ of restitution shall not issue until the court has had an opportunity to ascertain the facts sufficiently to enable it to estimate the probable loss to the defendant and fix the amount of a bond to indemnify the party or parties against whom the temporary writ may be issued.
 - (c) That the temporary writ of restitution shall not issue until there has been filed with the approval of the court a good and sufficient bond of indemnification in the amount fixed by the court.

N.R.S. 40.310

40.310. Issue of fact to be tried by jury if proper demand made

Whenever an issue of fact is presented by the pleadings, it shall be tried by a jury, if proper demand is made pursuant to the Nevada Rules of Civil Procedure or the Justice Court Rules of Civil Procedure.

N.R.S. 40.320

40.320. Proof required of plaintiff and defendant on trial

1. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was peaceably in the actual possession at the time of the forcible entry, or was entitled to possession at the time of the forcible detainer.
2. The defendant may show in defense that the defendant or the defendant's ancestors, or those whose interest in such premises the defendant claims, have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings, and that the defendant's interest therein is not then ended or determined, and such showing is a bar to the proceedings.

N.R.S. 40.330

40.330. Amendment of complaint to conform to proof; continuance

When, upon the trial of any proceeding under [NRS 40.220](#) to [40.420](#), inclusive, it appears from the evidence that the defendant has been guilty of either a forcible entry or forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

N.R.S. 40.340

40.340. Adjournments

The court or justice of the peace may for good cause shown adjourn the trial of any cause under [NRS 40.220](#) to [40.420](#), inclusive, not exceeding 5 days; and when the defendant, or the defendant's agent or attorney, shall make oath that the defendant cannot safely proceed to trial for want of some material witness, naming that witness, stating the evidence that the defendant expects to obtain, showing that the defendant has used due diligence to obtain such witness and believes that if an adjournment be allowed the defendant will be able to procure the attendance of such witness, or the witness's deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the court or justice of the peace shall adjourn the cause for such reasonable time as may appear necessary, not exceeding 30 days.

N.R.S. 40.350

40.350. Trial not to be adjourned when complainant admits evidence in affidavit would be given

If the complainant admit that the evidence stated in the affidavit mentioned in [NRS 40.340](#) would be given by such witness, and agree that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be adjourned.

N.R.S. 40.360

40.360. Judgment; damages; execution and enforcement

1. Judgment. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

N.R.S. 40.370

40.370. Verification of complaint and answer

The complaint and answer must be verified.

N.R.S. 40.380

40.380. Provisions governing appeals

Either party may, within 10 days, appeal from the judgment rendered. But an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, the defendant shall execute and file with the court or justice the defendant's undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court or justice, but which shall not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case shall be stayed.

N.R.S. 40.385

40.385. Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay

Upon an appeal from an order entered pursuant to [NRS 40.253](#):

1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of \$250 to cover the expected costs on appeal. A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as the surety's agent upon whom papers affecting the surety's liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action. A tenant of commercial property may obtain a stay of execution only upon the issuance of a stay pursuant to [Rule 8 of the Nevada Rules of Appellate Procedure](#) and the posting of a supersedeas bond in the amount of 100 percent of the unpaid rent claim of the landlord.

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to [NRS 40.253](#).

N.R.S. 40.390

40.390. Appellate court not to dismiss or quash proceedings for want of form

In all cases of appeal under [NRS 40.220 to 40.420](#), inclusive, the appellate court shall not dismiss or quash the proceedings for want of form, provided the proceedings have been conducted substantially according to the provisions of [NRS 40.220 to 40.420](#), inclusive; and amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment upon such terms as may be just; and all matters of excuse, justification or avoidance of the allegations in the complaint may be given in evidence under the answer.

N.R.S. 40.400

40.400. Rules of practice

The provisions of NRS, Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of [NRS 40.220 to 40.420](#), inclusive, apply to the proceedings mentioned in those sections.

N.R.S. 40.420

40.420. Form of writ of restitution; execution

1. The writ of restitution issued by a justice of the peace must be substantially in the following form:

The State of Nevada to the sheriff or constable of the county of, greeting: Whereas, A.B., of the county of, at a court of inquiry of an unlawful holding over of (lands) (tenements) (a mobile home), and other possessions, held at my office (stating the place), in the county aforesaid, on the day of, A.D., before me, a justice of the peace for the county aforesaid, by the consideration of the court, has recovered judgment against C.D., to have restitution of (here describe the premises as in the complaint). You are therefore commanded, that taking with you the force of the county, if necessary, you cause C.D. to be immediately removed from the premises, and A.B. to have peaceable restitution of the premises. You are also commanded that of the goods and chattels of C.D., within said county, which are not exempt from execution, you cause to be made the sum of dollars for the plaintiff, together with the

costs of suit endorsed hereon, and make return of this writ within 30 days after this date. Given under my hand, this day of, A.D.E.F., justice of the peace.

2. The sheriff or constable shall execute the writ in the same manner as required by the provisions of chapter 21 of NRS for writs of execution.

N.R.S. 40.425

40.425. Notice of execution on writ of restitution

1. Execution on the writ of restitution may occur only if the sheriff serves the judgment debtor with notice of the execution and a copy of the writ in the manner described in [NRS 21.076](#). The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions. The clerk of the court shall attach the notice to the writ at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be in the form and served in the manner provided for execution on judgments pursuant to [NRS 21.075](#) and [21.076](#).

N.R.S. 40.430

40.430. Action for recovery of debt secured by mortgage or other lien; “action” defined

1. Except in cases where a person proceeds under subsection 2 of [NRS 40.495](#) or subsection 1 of [NRS 40.512](#), and except as otherwise provided in [NRS 118C.220](#), there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of [NRS 40.430](#) to [40.459](#), inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in [NRS 40.462](#).

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an “action” does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in [NRS 32.015](#).

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

- (c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.
- (d) For the recovery of damages arising from the commission of a tort, including a recovery under [NRS 40.750](#), or the recovery of any declaratory or equitable relief.
- (e) For the exercise of a power of sale pursuant to [NRS 107.080](#).
- (f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.
- (g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.
- (h) To draw under a letter of credit.
- (i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to [11 U.S.C. § 362](#) or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of [NRS 107.095](#).
- (j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.
- (k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.
- (l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.
- (m) Which does not include the collection of the debt or realization of the collateral securing the debt.
- (n) Pursuant to [NRS 40.507](#) or [40.508](#).
- (o) Which is exempted from the provisions of this section by specific statute.
- (p) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

N.R.S. 40.433

40.433. “Mortgage or other lien” defined

As used in [NRS 40.430](#) to [40.459](#), inclusive, unless the context otherwise requires, a “mortgage or other lien” includes a deed of trust, but does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

N.R.S. 40.435

40.435. Judicial proceedings in violation of NRS 40.430; provisions of NRS 40.430 as an affirmative defense

1. The commencement of or participation in a judicial proceeding in violation of [NRS 40.430](#) does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

- (a) Stayed or dismissed before entry of a final judgment; or
- (b) Converted into an action which does not violate [NRS 40.430](#).

2. If the provisions of [NRS 40.430](#) are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:

(a) Dismiss the proceeding without prejudice; or

(b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate [NRS 40.430](#).

3. The failure to interpose, before the entry of a final judgment, the provisions of [NRS 40.430](#) as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

4. As used in this section, “final judgment” means a judgment which imposes personal liability on the debtor for the payment of money and which may be appealed under the Nevada Rules of Appellate Procedure.

N.R.S. 40.440

40.440. Disposition of surplus money

If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs, the court may cause the same to be paid to the person entitled to it pursuant to [NRS 40.462](#), and in the meantime may direct it to be deposited in court.

N.R.S. 40.450

40.450. Proceedings when debt secured falls due at different times

If the debt for which the mortgage or other lien on real property is held is not all due, as soon as a sufficient amount of the property has been sold to pay the amount due, with costs, the sale shall cease. Afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. However, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where such a rebate is proper.

N.R.S. 40.451

40.451. “Indebtedness” defined

As used in [NRS 40.451](#) to [40.463](#), inclusive, “indebtedness” means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

N.R.S. 40.453

40.453. Waiver of rights in documents relating to sale of real property against public policy and unenforceable; exception

Except as otherwise provided in [NRS 40.495](#):

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.

2. A court shall not enforce any such provision.

N.R.S. 40.455

40.455. Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions

1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to [NRS 107.080](#), respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. As used in this section, "financial institution" has the meaning ascribed to it in [NRS 363A.050](#).

N.R.S. 40.457

40.457. Hearing before award of deficiency judgment; appraisal of property sold

1. Before awarding a deficiency judgment under [NRS 40.455](#), the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee's sale. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale or trustee's sale. Such appraiser shall file with the clerk the appraisal, which is admissible in evidence. The appraiser shall take an oath that the appraiser has truly, honestly and impartially appraised the property to the best of the appraiser's knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but the appraiser's

fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

N.R.S. 40.458

40.458. Deficiency judgment: Award to judgment creditor or beneficiary or deed of trust prohibited under certain circumstances

1. If the judgment creditor or the beneficiary of the deed of trust who applies for a deficiency judgment is a banking or other financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:

(a) The real property is a single-family dwelling and the debtor or the grantor of the deed of trust was the owner of the real property at the time of the sale in lieu of a foreclosure sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust;

(d) The debtor or grantor and the banking or other financial institution entered into an agreement to sell the real property secured by the mortgage or deed of trust to a third party for an amount less than the indebtedness secured thereby; and

(e) The agreement entered into pursuant to paragraph (d):

(1) Does not state the amount of money still owed to the banking or other financial institution by the debtor or grantor or does not authorize the banking or other financial institution to recover that amount from the debtor or grantor; and

(2) Contains a conspicuous statement that has been acknowledged by the signature of the debtor or grantor which provides that the banking or other financial institution has waived its right to recover the amount owed by the debtor or grantor and which sets forth the amount of recovery that is being waived.

2. As used in this section:

(a) "Banking or other financial institution" means any bank, savings and loan association, savings bank, thrift company, credit union or other financial institution that is licensed, registered or otherwise authorized to do business in this State.

(b) "Sale in lieu of a foreclosure sale" means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of foreclosure.

N.R.S. 40.459

40.459. Limitations on amount of money judgment

1. After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

(a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale;

(b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale; or

(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for

that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs, whichever is the lesser amount.

2. For the purposes of this section, the “amount of the indebtedness” does not include any amount received by, or payable to, the judgment creditor or beneficiary of the deed of trust pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.

N.R.S. 40.462

40.462. Distribution of proceeds of foreclosure sale

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of [NRS 40.455](#), [40.457](#) and [40.459](#) do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to [NRS 40.455](#), [40.457](#) and [40.459](#).

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor's successor in interest.

If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person's satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

4. As used in this section, “foreclosure sale” means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to [NRS 107.080](#).

N.R.S. 40.463

40.463. Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable

1. Except as otherwise provided in this section, a debtor or the debtor's successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or the debtor's successor in interest pursuant to paragraph (d) of subsection 2 of [NRS 40.462](#).

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

(2) Be signed by the debtor or the debtor's successor in interest; and

(3) Contain an acknowledgment of the signature of the debtor or the debtor's successor in interest by a notary public; and

(b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.

3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.

4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds \$2,500, excluding attorney's fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.

5. A third party may apply to the court for permission to charge a fee that exceeds \$2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.

6. This section does not preclude a debtor or the debtor's successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.

7. As used in this section:

(a) "Creditor" means a person due an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to 40.463, inclusive.

(b) "Debtor" means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to 40.463, inclusive.

(c) "Third party" means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to 40.463, inclusive.

N.R.S. 40.4631

40.4631. Definitions

As used in [NRS 40.4631](#) to [40.4639](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 40.4632](#), [40.4633](#) and [40.4634](#) have the meanings ascribed to them in those sections.

N.R.S. 40.4632

40.4632. "Foreclosure sale" defined

"Foreclosure sale" has the meaning ascribed to it in [NRS 40.462](#).

N.R.S. 40.4633

40.4633. “Mortgage of other lien” defined

“Mortgage or other lien” has the meaning ascribed to it in [NRS 40.433](#).

N.R.S. 40.4634

40.4634. “Sale in lieu of of a foreclosure sale” defined

“Sale in lieu of a foreclosure sale” means a sale of real property pursuant to an agreement between a person to whom an obligation secured by a mortgage or other lien on real property is owed and the debtor of that obligation in which the sales price of the real property is insufficient to pay the full outstanding balance of the obligation and the costs of the sale. The term includes, without limitation, a deed in lieu of a foreclosure sale.

N.R.S. 40.4636

40.4636. Limitations on amount of money judgment

1. If a person to whom an obligation secured by a junior mortgage or lien on real property is owed:

(a) Files a civil action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(b) Such action is not barred by [NRS 40.430](#),

in determining the amount owed by the debtor, the court shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default on the obligation.

2. If:

(a) A person acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right;

(b) The person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale; and

(c) Such action is not barred by [NRS 40.430](#),

the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date on which the person acquired the right and reasonable costs.

3. As used in this section, “obligation secured by a junior mortgage or lien on real property” includes, without limitation, an obligation which is not currently secured by a mortgage or lien on real property if the obligation:

(a) Is incurred by the debtor under an obligation which was secured by a mortgage or lien on real property; and

(b) Has the effect of reaffirming the obligation which was secured by a mortgage or lien on real property.

N.R.S. 40.4638

40.4638. Circumstances under which action to enforce obligation is prohibited

1. A person to whom an obligation secured by a junior mortgage or lien on real property is owed may not bring any action to enforce that obligation after a foreclosure sale of the real property which secured that obligation or a sale in lieu of a foreclosure sale if:

(a) The person is a financial institution;

- (b) The real property which secured the obligation is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or sale in lieu of a foreclosure sale;
 - (c) The debtor or grantor used the amount of the obligation to purchase the real property;
 - (d) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the obligation; and
 - (e) The debtor or grantor did not refinance the obligation after securing it.
2. As used in this section, "financial institution" has the meaning ascribed to it in [NRS 363A.050](#).

N.R.S. 40.4639

40.4639. Period of limitation on commencement of civil action

A civil action not barred by [NRS 40.430](#) or section 3 of this act by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

N.R.S. 40.464

40.464. Duty to maintain vacant residential property acquired at foreclosure sale; notice of violation; proceedings for enforcement; civil penalties

1. Any vacant residential property purchased or acquired by a person at a foreclosure sale pursuant to [NRS 40.430](#) must be maintained by that person in accordance with subsection 2.
2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:
 - (a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;
 - (b) Preventing trespassers from remaining on the property;
 - (c) Preventing mosquito larvae from growing in standing water; and
 - (d) Preventing any other condition that creates a public nuisance.
3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:
 - (a) Describing the violation;
 - (b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and
 - (c) Informing the person that the person may contest the allegation pursuant to subsection 4.
4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.
5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:
 - (a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.

10. As used in this section, “applicable governmental entity” means:

(a) If the property is within the boundaries of a city, the governing body of the city; and

(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

N.R.S. 40.465

40.465. “Indebtedness” defined

As used in [NRS 40.475](#), [40.485](#) and [40.495](#), “indebtedness” means the principal balance of the obligation, together with all accrued and unpaid interest, and those costs, fees, advances and other amounts secured by the mortgage or lien upon real property.

N.R.S. 40.475

40.475. Remedy against mortgagor or grantor; assignment of creditor's rights to guarantor, surety or obligor

Upon full satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor is entitled to enforce every remedy which the creditor then has against the mortgagor or grantor of the mortgage or lien upon real property, and is entitled to an assignment from the creditor of all of the rights which the creditor then has by way of security for the performance of the indebtedness.

N.R.S. 40.485

40.485. Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness

Immediately upon partial satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor automatically, by operation of law and without further action, receives an interest in the proceeds of the indebtedness secured by the mortgage or lien to the extent of the partial satisfaction, subject only to the creditor's prior right to recover the balance of the indebtedness owed by the mortgagor or grantor.

N.R.S. 40.495

40.495. Waiver of rights; separate action to enforce obligation; limitation on amount of judgment; available defenses

1. The provisions of [NRS 40.475](#) and [40.485](#) may be waived by the guarantor, surety or other obligor only after default.
2. Except as otherwise provided in subsection 5, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of [NRS 40.430](#). If a guarantor, surety or other obligor waives the provisions of [NRS 40.430](#), an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:
 - (a) An action on the debt;
 - (b) The exercise of any power of sale;
 - (c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and
 - (d) Any other proceeding against a mortgagor or grantor of a deed of trust.
3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of [NRS 40.451](#) to [40.4639](#), inclusive.
4. If, before a foreclosure sale of real property, the obligee commences an action against a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, to enforce an obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon the real property:
 - (a) The court must hold a hearing and take evidence presented by either party concerning the fair market value of the property as of the date of the commencement of the action. Notice of such hearing must be served upon all defendants who have appeared in the action and against whom a judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing.
 - (b) After the hearing, if the court awards a money judgment against the guarantor, surety or other obligor who is personally liable for the debt, the court must not render judgment for more than:
 - (1) The amount by which the amount of the indebtedness exceeds the fair market value of the property as of the date of the commencement of the action; or
 - (2) If a foreclosure sale is concluded before a judgment is entered, the amount that is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, whichever is the lesser amount.
5. The provisions of [NRS 40.430](#) may not be waived by a guarantor, surety or other obligor if the mortgage or lien:
 - (a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;
 - (b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;
 - (c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or
 - (d) Is secured by real property upon which:
 - (1) The owner maintains the owner's principal residence;

- (2) There is not more than one residential structure; and
 - (3) Not more than four families reside.
6. As used in this section, “foreclosure sale” has the meaning ascribed to it in [NRS 40.462](#).

N.R.S. 40.501

40.501. Definitions

As used in NRS 40.501 to [40.512](#), inclusive, the words and terms defined in [NRS 40.502](#) to [40.506](#), inclusive, have the meanings ascribed to them in those sections.

N.R.S. 40.502

40.502. “Environmental provision” defined

“Environmental provision” means any written representation, warranty, indemnity, promise or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, future or threatened release of any hazardous substance from, in, into or onto real collateral, or to past, present or future compliance with any law relating thereto, made by a debtor in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor, whether or not the representation, warranty, indemnity, promise or covenant is or was contained in or secured by the mortgage and whether or not the mortgage has been discharged, reconveyed or foreclosed upon.

N.R.S. 40.503

40.503. “Environmentally impaired” defined

Real collateral is “environmentally impaired” if the estimated costs to clean up and remedy a past, present or threatened release of any hazardous substance from, in, into or onto it exceeds 10 percent of the total indebtedness owed to the secured lender secured by the collateral.

N.R.S. 40.504

40.504. “Hazardous substance” defined

“Hazardous substance” means:

1. An element, compound, mixture, solution, material or substance whose use, possession, transportation, storage, release, discharge or disposal is regulated pursuant to chapter 444, 445A, 445B, 459, 477, 590 or 618 of NRS or the Uniform Fire Code (1988 edition);
2. An element, compound, mixture, solution, material or substance designated as a hazardous substance pursuant to [42 U.S.C. § 9602](#) and an element, compound, mixture, solution, material or substance described in [42 U.S.C. § 9601\(14\)](#);
3. An element, compound, mixture, solution, material or substance listed as a hazardous waste in, or having the characteristics identified in, [42 U.S.C. § 6921](#) on January 1, 1993, except any waste for which regulation under the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. §§ 6901 et seq.](#)) has been suspended by an act of Congress; and
4. Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic oil, synthetic gas usable for fuel or any mixture thereof.

N.R.S. 40.505

40.505. “Release” defined

“Release” means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing of a hazardous substance into the environment, including continuing migration into or through the soil, surface water or groundwater.

N.R.S. 40.506

40.506. “Secured lender” defined

“Secured lender” means the holder of an obligation secured by a mortgage.

N.R.S. 40.507

40.507. Right of entry and inspection of real collateral

1. A secured lender may enter and inspect real collateral for the purpose of determining the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it:

(a) Upon reasonable belief of the existence of a past, present or threatened release or the presence of any hazardous substance from, in, into or onto it not previously disclosed in writing to the secured lender in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor; or

(b) After the commencement of a trustee's sale or judicial foreclosure proceedings against the real collateral.

2. A secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property. Except in case of an emergency, when the debtor or tenant of the property has abandoned the premises, or if it is impracticable to do so, a secured lender shall give the debtor or tenant of the property reasonable notice of intent to enter, and enter only during the debtor's or tenant's normal business hours. Twenty-four hours' notice is presumed to be reasonable in the absence of evidence to the contrary.

3. If a secured lender is refused the right of entry and inspection by the debtor or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subsection 1.

N.R.S. 40.508

40.508. Action by secured lender concerning environmental provision

A secured lender may bring a separate action for a breach of an environmental provision, to recover damages for the breach or for the enforcement of an environmental provision.

N.R.S. 40.509

40.509. Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest

1. Unless the environmental provision expressly permits a different or greater recovery or subsection 2 permits the addition of interest, the damages recoverable by a secured lender in an action pursuant to [NRS 40.508](#) are limited to the sum of reimbursement or indemnification for:

(a) If the secured lender acted pursuant to an order of any federal, state or local governmental agency relating to the cleaning up, remedying or other responsive action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured lender in connection therewith;

- (b) If the secured lender did not act pursuant to such an order, those costs relating to a reasonable cleaning up, remedying or other responsive action concerning hazardous substances, performed in good faith, which is anticipated by the environmental provision;
 - (c) All liabilities of the secured lender to any third party relating to the breach, unless the secured lender had actual knowledge of the environmental condition which is the basis of the claim for indemnification before entering into the transaction in which the environmental provision was given; and
 - (d) Costs, attorney's fees and other incidental relief.
2. If the parties have so agreed, the secured lender may recover interest on the amount advanced by the secured lender to cure or mitigate the breach.

N.R.S. 40.511

40.511. Exceptions to applicability of NRS 40.507 and 40.508

NRS 40.507 and 40.508 do not apply if the real collateral is a unit put to residential use in a common-interest community or is real property upon which:

1. The owner maintains the owner's principal residence;
2. There is not more than one residential structure; and
3. Not more than four families reside.

N.R.S. 40.512

40.512. Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver

1. If real collateral is environmentally impaired and the debtor's obligation is in default, a secured lender may:

(a) Waive the secured lender's lien as to all of the real collateral and proceed as an unsecured creditor, including reduction of the secured lender's claim against the debtor to judgment and any other rights and remedies permitted by law; or

(b) Waive the secured lender's lien in accordance with paragraph (a) as to that part of the real collateral which is environmentally impaired and proceed against the unimpaired real collateral.

2. To waive the secured lender's lien against all or part of the environmentally impaired real collateral, the secured lender must, before commencement of any action, record with the county recorder of the county where the real collateral is located a notice of intent to waive the lien and mail a copy thereof, by registered or certified mail, return receipt requested, with postage prepaid, to the debtor, to the person who holds the title of record on the date of the notice, and to those persons with an interest, as defined in NRS 107.090, whose interest or claimed interest is subordinate to the secured lender's lien, at their respective addresses, if known, otherwise to the address of the real collateral. In the case of a partial waiver the notice of intent to waive may be contained in a notice of default and election to sell. The notice of intent to waive must contain:

(a) A legal description of the environmentally impaired real collateral;

(b) A statement that the secured lender intends to proceed against the debtor under the applicable paragraph of subsection 1; and

(c) If the secured lender is proceeding under paragraph (b) of subsection 1, a statement that the secured lender will proceed against the unimpaired property, which may result in a judgment for deficiency against the debtor as a result of diminution in value of the collateral because of the exclusion of the environmentally impaired portion.

3. A secured lender may not waive the secured lender's lien as a result of any environmental impairment if the secured lender had actual knowledge of the environmental impairment at the time the lien was created. In determining whether a secured lender had such knowledge, the report of any person legally entitled to prepare the report with respect to the existence or absence of any environmental impairment is prima facie evidence of the existence or absence, as the case may be, of any environmental impairment.

4. A waiver made by a secured lender pursuant to this section is not final or conclusive until a final judgment, as defined in subsection 4 of [NRS 40.435](#), has been obtained. If the waiver covers the full extent of the collateral, the secured lender shall immediately thereafter cause the secured lender's lien to be released by recording the waiver in the same manner as the lien was recorded.

N.R.S. 40.515

40.515. Petition, notice, hearing and order

If any person has died, or shall hereafter die, who at the time of the person's death was the owner of a life estate which terminates by reason of the person's death, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the district court of the county in which the property is situated, the person's verified petition, setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court or judge may order, the court or judge shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of the person's death, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the county recorder.

N.R.S. 40.525

40.525. Petition; notice; hearing and order; alternative method

1. If title or an interest in real or personal property is affected by the death of any person, any other person who claims any interest in the real or personal property, if the other person's interest is affected by the death of the deceased person, or the State of Nevada, may file in the district court of any county in which any part of the real or personal property is situated a verified petition setting forth those facts and particularly describing the real or personal property, the interest of the petitioner and the interest of the deceased person therein.

2. The clerk shall set the petition for hearing by the court. Notice of hearing of the petition must be mailed, by certified mail, return receipt requested, postage prepaid, to the heirs at law of the deceased person at their places of business or residences, if known, and if not, by publication for at least 3 successive weeks in such newspaper as the court orders. The clerk shall send a copy of the notice of hearing or of the affidavit to the Department of Health and Human Services by certified mail, return receipt requested, postage prepaid, if the State is not the petitioner, at the time notice is mailed to the heirs at law or the notice is published. Failure on the part of any such heir at law to contest the petition precludes any such heir at law from thereafter contesting the validity of the joint interest or its creation or termination.

3. The court shall take evidence for or against the petition, and may render judgment thereon establishing the fact of the death and the termination of the interest of the deceased person in the real or personal property described in the petition.

4. A certified copy of the decree may be recorded in the office of the recorder of each county in which any part of the real or personal property is situated.

5. As an alternative method of terminating the interest of the deceased person, if title or an interest in real or personal property held in joint tenancy or as community property with right of survivorship is affected by the death of a joint tenant or spouse, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of [NRS 111.365](#), accompanied by a certified copy of the death certificate of the deceased person.

N.R.S. 40.535

40.535. Affidavit or petition may be filed in probate proceeding

Any affidavit or petition, such as described in [NRS 40.525](#), may be filed as a part of any probate proceeding.

N.R.S. 40.600

40.600. Definitions

As used in NRS 40.600 to [40.695](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 40.603](#) to [40.634](#), inclusive, have the meanings ascribed to them in those sections.

N.R.S. 40.603

40.603. “Amend a complaint to add a cause of action for a constructional defect” defined

“Amend a complaint to add a cause of action for a constructional defect” means any act by which a claimant seeks to:

1. Add to the pleadings a defective component that is not otherwise included in the pleadings and for which a notice was not previously given; or
2. Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.

The term does not include amending a complaint to plead a different cause for a constructional defect which is included in the same action.

N.R.S. 40.605

40.605. “Appurtenance” defined

1. “Appurtenance” means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more residences, but is not a part of the dwelling unit. The term includes, without limitation, the parcel of real property, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping, common elements and limited common elements other than those described in [NRS 116.2102](#), and other structures, installations, facilities and amenities associated with or benefiting one or more residences.

2. As used in this section:

- (a) “Common elements” has the meaning ascribed to it in [NRS 116.017](#).
- (b) “Limited common element” has the meaning ascribed to it in [NRS 116.059](#).

N.R.S. 40.610

40.610. “Claimant” defined

“Claimant” means:

1. An owner of a residence or appurtenance;

2. A representative of a homeowner's association that is responsible for a residence or appurtenance and is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS; or
3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of [NRS 40.645](#).

N.R.S. 40.615

40.615. "Constructional defect" defined

"Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances;
2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed;
3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or
4. Which presents an unreasonable risk of injury to a person or property.

N.R.S. 40.620

40.620. "Contractor" defined

"Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or herself or through the person's agents, employees or subcontractors:

1. Develops, constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof;
2. Develops a site for a residence, appurtenance or any part thereof; or
3. Sells a residence or appurtenance, any part of which the person, by himself or herself or through the person's agents, employees or subcontractors, has developed, constructed, altered, repaired, improved or landscaped.

N.R.S. 40.623

40.623. "Design professional" defined

"Design professional" means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.

N.R.S. 40.625

40.625. "Homeowner's warranty" defined

"Homeowner's warranty" means a warranty or policy of insurance:

1. Issued or purchased by or on behalf of a contractor for the protection of a claimant; or
2. Purchased by or on behalf of a claimant pursuant to [NRS 690B.100](#) to [690B.180](#), inclusive.

The term includes a warranty contract issued by a risk retention group that operates in compliance with chapter 695E of NRS and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

N.R.S. 40.630

40.630. “Residence” defined

“Residence” means any dwelling in which title to the individual units is transferred to the owners.

N.R.S. 40.632

40.632. “Subcontractor” defined

“Subcontractor” means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

N.R.S. 40.634

40.634. “Supplier” defined

“Supplier” means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.

N.R.S. 40.635

40.635. Applicability; effect on other defenses

[NRS 40.600](#) to [40.695](#), inclusive:

1. Apply to any claim that arises before, on or after July 1, 1995, as the result of a constructional defect, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 1, 1995.
2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.
3. Do not bar or limit any defense otherwise available, except as otherwise provided in those sections.
4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.

N.R.S. 40.640

40.640. Liability of contractor

In a claim to recover damages resulting from a constructional defect, a contractor is liable for the contractor’s acts or omissions or the acts or omissions of the contractor’s agents, employees or subcontractors and is not liable for any damages caused by:

1. The acts or omissions of a person other than the contractor or the contractor’s agent, employee or subcontractor;
2. The failure of a person other than the contractor or the contractor’s agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;
3. Normal wear, tear or deterioration;
4. Normal shrinkage, swelling, expansion or settlement; or
5. Any constructional defect disclosed to an owner before the owner’s purchase of the residence, if the disclosure was provided in language that is understandable and was written in underlined and boldfaced type with capital letters.

N.R.S. 40.645

40.645. Notice of defect: Required before commencement of or addition to certain actions; content; reliance on expert opinion based on representative sample; notice regarding similarly situated owners; persons authorized to provide notice; exceptions

1. Except as otherwise provided in this section and [NRS 40.670](#), before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:
 - (a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if the contractor's address is not listed in those records; and
 - (b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.
2. The notice given pursuant to subsection 1 must:
 - (a) Include a statement that the notice is being given to satisfy the requirements of this section;
 - (b) Specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim; and
 - (c) Describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each residence or appurtenance to the extent known.
3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.
4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:
 - (a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;
 - (b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and
 - (c) A copy of the expert opinion is included with the notice.
5. A representative of a homeowner's association may send notice pursuant to this section on behalf of an association that is responsible for a residence or appurtenance if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.
6. Notice is not required pursuant to this section before commencing an action if:
 - (a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or
 - (b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.

N.R.S. 40.6452

40.6452. Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners

1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of [NRS 40.645](#) which alleges common constructional defects to residences or appurtenances within a single development and which complies with the requirements of subsection 4 of [NRS 40.645](#) for giving such notice, the contractor may respond to the named owners of the residences or appurtenances in the notice in the manner set forth in [NRS 40.6472](#).

2. The contractor may provide a disclosure of the notice of the alleged common constructional defects to each unnamed owner of a residence or appurtenance within the development to whom the notice may apply in the manner set forth in this section. The disclosure must be sent by certified mail, return receipt requested, to the home address of each such owner. The disclosure must be mailed not later than 60 days after the contractor receives the notice of the alleged common constructional defects, except that if the common constructional defects may pose an imminent threat to health and safety, the disclosure must be mailed as soon as reasonably practicable, but not later than 20 days after the contractor receives the notice.

3. The disclosure of a notice of alleged common constructional defects provided by a contractor to the unnamed owners to whom the notice may apply pursuant to subsection 2 must include, without limitation:

(a) A description of the alleged common constructional defects identified in the notice that may exist in the residence or appurtenance;

(b) A statement that notice alleging common constructional defects has been given to the contractor which may apply to the owner;

(c) A statement advising the owner that the owner has 30 days within which to request the contractor to inspect the residence or appurtenance to determine whether the residence or appurtenance has the alleged common constructional defects;

(d) A form which the owner may use to request such an inspection or a description of the manner in which the owner may request such an inspection;

(e) A statement advising the owner that if the owner fails to request an inspection pursuant to this section, no notice shall be deemed to have been given by the owner for the alleged common constructional defects; and

(f) A statement that if the owner chooses not to request an inspection of the owner's residence or appurtenance, the owner is not precluded from sending a notice pursuant to [NRS 40.645](#) individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in [NRS 40.600](#) to [40.695](#), inclusive.

4. If an unnamed owner requests an inspection of the owner's residence or appurtenance in accordance with subsection 3, the contractor must provide the response required pursuant to [NRS 40.6472](#) not later than 45 days after the date on which the contractor receives the request.

5. If a contractor who receives a notice pursuant to subsection 4 of [NRS 40.645](#) does not provide a disclosure to unnamed owners as authorized pursuant to this section, the owners of the residences or appurtenances to whom the notice may apply may commence an action for the constructional defect without complying with any other provision set forth in [NRS 40.600](#) to [40.695](#), inclusive. This subsection does not establish or prohibit the right to maintain a class action.

6. If a contractor fails to provide a disclosure to an unnamed owner to whom the notice of common constructional defects was intended to apply:

(a) The contractor shall be deemed to have waived the contractor's right to inspect and repair any common constructional defect that was identified in the notice with respect to that owner; and

(b) The owner is not required to comply with the provisions set forth in [NRS 40.645](#) or [40.647](#) before commencing an action or amending a complaint to add a cause of action based on that common constructional defect.

N.R.S. 40.646

40.646. Notice of defect to be forwarded by contractor to subcontractor, supplier or design professional; effect of failure to forward notice; inspection of alleged defect; election to repair

1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to [NRS 40.645](#), the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.

2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. Except as otherwise provided in subsection 4, not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 1 of [NRS 40.6462](#) and provide the contractor with a written statement indicating:

(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(b) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

4. If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of [NRS 40.645](#) and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to [NRS 40.6452](#):

(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and

(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of [NRS 40.6462](#) and provide the contractor with a written statement indicating:

(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(2) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

5. If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.

N.R.S. 40.6462

40.6462. Access to residence or appurtenance with alleged defect after notice of defect is given; effect on owners who did not provide notice

1. Except as otherwise provided in subsection 2, after notice of a constructional defect is given to a contractor pursuant to [NRS 40.645](#), the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to inspect shall coordinate and conduct the inspections in a manner which minimizes the inconvenience to the claimant.

2. If notice is given to the contractor pursuant to subsection 4 of [NRS 40.645](#), the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in [NRS 40.6452](#). If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to [NRS 40.645](#).

N.R.S. 40.647

40.647. Claimant required to allow inspection of and reasonable opportunity to repair defect; effect of noncompliance

1. Except as otherwise provided in [NRS 40.6452](#), after notice of a constructional defect is given pursuant to [NRS 40.645](#), before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to [NRS 40.6462](#); and

(b) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to [NRS 40.6472](#).

2. If a claimant commences an action without complying with subsection 1 or [NRS 40.645](#), the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

N.R.S. 40.6472

40.6472. Response to notice of defect: Time for sending; content; effect of election to repair or not to repair

1. Except as otherwise provided in [NRS 40.6452](#), [40.670](#) and [40.672](#), a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to [NRS 40.645](#):

(a) By the contractor not later than 90 days after the contractor receives the notice; and

(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.

2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:

(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from the claimant's home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.

(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.

(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.

3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.

4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

N.R.S. 40.648

40.648. Election to repair defect: Who may repair; manner for performing repairs; deadline for repair; extension of deadline; written statement of repairs performed

1. If the response provided pursuant to [NRS 40.6472](#) includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person is not, the repairs may be performed by another person who meets those qualifications.

(b) The repairs must be performed:

(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;

- (2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and
- (3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.
- (c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced.
- (d) The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.
2. Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:
- (a) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#) and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.
- (b) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#) and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.
- (c) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#), not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to [NRS 40.6452](#).
- (d) If the notice was not sent pursuant to subsection 4 of [NRS 40.645](#):
- (1) Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or
- (2) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.
3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.
4. Any election to repair made pursuant to [NRS 40.6472](#) may not be made conditional upon a release of liability.
5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.

N.R.S. 40.649

40.649. Notice of defect may be presented to insurer; duties of insurer

1. If a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect, the contractor, subcontractor, supplier or design professional may present

the claim to an insurer which has issued a policy of insurance that covers all or any portion of the business of the contractor, subcontractor, supplier or design professional.

2. If the contractor, subcontractor, supplier or design professional presents the claim to the insurer pursuant to this section, the insurer:

(a) Must treat the claim as if a civil action has been brought against the contractor, subcontractor, supplier or design professional; and

(b) Must provide coverage to the extent available under the policy of insurance as if a civil action has been brought against the contractor, subcontractor, supplier or design professional.

3. A contractor, subcontractor, supplier or design professional is not required to present a claim to the insurer pursuant to this section, and the failure to present such a claim to the insurer does not relieve the insurer of any duty under the policy of insurance to the contractor, subcontractor, supplier or design professional.

N.R.S. 40.650

40.650. Effect of rejecting reasonable offer of settlement; effect of failing to take certain actions concerning defect; effect of coverage available under homeowner's warranty

1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of [NRS 40.6472](#) and thereafter commences an action governed by [NRS 40.600](#) to [40.695](#), inclusive, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and

(b) Award attorney's fees and costs to the contractor.

Any sums paid under a homeowner's warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of [NRS 40.6472](#);

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to [NRS 40.680](#); or

(e) Participate in mediation,

the limitations on damages and defenses to liability provided in [NRS 40.600](#) to [40.695](#), inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of [NRS 40.600](#) to [40.695](#), inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to [NRS 690B.100](#) to [690B.180](#), inclusive, a claimant shall diligently pursue a claim under the contract. If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

4. Nothing in this section prohibits an offer of judgment pursuant to [Rule 68 of the Nevada Rules of Civil Procedure](#) or [NRS 17.115](#) if the offer of judgment includes all damages to which the claimant is entitled pursuant to [NRS 40.655](#).

N.R.S. 40.655

40.655. Limitation on recovery

1. Except as otherwise provided in [NRS 40.650](#), in a claim governed by [NRS 40.600](#) to [40.695](#), inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) Any reasonable attorney's fees;

(b) The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

(c) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(d) The loss of the use of all or any part of the residence;

(e) The reasonable value of any other property damaged by the constructional defect;

(f) Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

(g) Any interest provided by statute.

2. The amount of any attorney's fees awarded pursuant to this section must be approved by the court.

3. If a contractor complies with the provisions of [NRS 40.600](#) to [40.695](#), inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to [NRS 40.600](#) to [40.695](#), inclusive.

4. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

5. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

N.R.S. 40.660

40.660. Nonacceptance of offer of settlement deemed rejection

An offer of settlement made pursuant to paragraph (b) of subsection 2 of [NRS 40.6472](#) that is not accepted within 35 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of the claimant's failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.

N.R.S. 40.665

40.665. Settlement by repurchase; certain offers of settlement deemed reasonable

In addition to any other method provided for settling a claim pursuant to [NRS 40.600](#) to [40.695](#), inclusive, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include provisions which reimburse the claimant for:

1. The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was sold to the claimant;
 2. The value of any improvements made to the property by a person other than the contractor;
 3. Reasonable attorney's fees and fees for experts; and
 4. Any costs, including costs and expenses for moving and costs, points and fees for loans.
- Any offer of settlement made that includes the items listed in this section shall be deemed reasonable for the purposes of subsection 1 of [NRS 40.650](#).

N.R.S. 40.667

40.667. Effect of written waiver or settlement agreement when contractor fails to correct or repair defect properly; conditions to bringing action; effect of failure to prevail in action

1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a claim for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.
2. The provisions of subsection 1 do not apply to any written waiver or settlement agreement described in subsection 1, unless:
 - (a) The claimant has obtained the opinion of an expert concerning the constructional defect;
 - (b) The claimant has provided the contractor with a written notice of the defect pursuant to [NRS 40.645](#) and a copy of the expert's opinion; and
 - (c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in [NRS 40.600](#) to [40.695](#), inclusive.
3. The provisions of this section do not apply to repairs which are made pursuant to an election to repair pursuant to [NRS 40.6472](#).
4. If a claimant does not prevail in any action which is not barred pursuant to this section, the court may:
 - (a) Deny the claimant's attorney's fees, fees for an expert witness or costs; and
 - (b) Award attorney's fees and costs to the contractor.

N.R.S. 40.668

40.668. Action against subdivider or master developer for defect in appurtenance in planned unit development: Conditions and limitations; tolling of statutes of limitation or repose; applicability

1. Notwithstanding the provisions of [NRS 40.600](#) to [40.695](#), inclusive, a claimant may not commence an action against a subdivider or master developer for a constructional defect in an appurtenance constructed on behalf of the subdivider or master developer in a planned unit development, to the extent that the appurtenance was constructed by or through a licensed general contractor, unless:
 - (a) The subdivider or master developer fails to provide to the claimant the name, address and telephone number of each contractor hired by the subdivider or master developer to construct the appurtenance within 30 days of the receipt by the subdivider or master developer of a request from the claimant for such information; or
 - (b) After the claimant has made a good faith effort to obtain full recovery from the contractors hired by the subdivider or master developer to construct the appurtenance, the claimant has not obtained a full recovery.

2. All statutes of limitation or repose applicable to a claim governed by this section are tolled from the time the claimant notifies a contractor hired by the subdivider or master developer of the claim until the earlier of the date:

(a) A court determines that the claimant cannot obtain a full recovery against those contractors; or

(b) The claimant receives notice that those contractors are bankrupt, insolvent or dissolved.

Tolling pursuant to this subsection applies only to the subdivider or master developer. Notwithstanding any applicable statute of limitation or repose, the claimant may commence an action against the subdivider or master developer for the claim within 1 year after the end of the tolling described in this subsection.

3. Nothing in this section prohibits the commencement of an action against a subdivider or master developer for a constructional defect in a residence sold, designed or constructed by or on behalf of the subdivider or master developer.

4. Nothing in this section prohibits a person other than the claimant from commencing an action against a subdivider or master developer to enforce the person's own rights.

5. The provisions of this section do not apply to a subdivider or master developer who acts as a general contractor or uses the subdivider's or master developer's license as a general contractor in the course of constructing the appurtenance that is the subject of the action.

6. As used in this section:

(a) "Master developer" means a person who buys, sells or develops a planned unit development, including, without limitation, a person who enters into a development agreement pursuant to [NRS 278.0201](#).

(b) "Planned unit development" has the meaning ascribed to it in [NRS 278A.065](#).

(c) "Subdivider" has the meaning ascribed to it in [NRS 278.0185](#).

N.R.S. 40.670

40.670. Defect which creates imminent threat to health or safety: Duty to cure; effect of failure to cure; exceptions

1. A contractor, subcontractor, supplier or design professional who receives written notice of a constructional defect resulting from work performed by the contractor, subcontractor, supplier or design professional which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor, subcontractor, supplier or design professional shall not cure the defect by making any repairs for which such person is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor, subcontractor, supplier or design professional fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor, subcontractor, supplier or design professional the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.

2. A contractor, subcontractor, supplier or design professional who does not cure a defect pursuant to this section because such person has determined, in good faith and after a reasonable inspection, that there is not an imminent threat to the health or safety of the inhabitants is not liable for attorney's fees and costs pursuant to this section, except that if a building inspector, building official or other similar authority employed by a governmental body with jurisdiction certifies that there is an imminent threat to the health and safety of the inhabitants of the

residence, the contractor, subcontractor, supplier or design professional is subject to the provisions of subsection 1.

N.R.S. 40.672

40.672. Defect in new residence: Duty to repair; deadline for repair; extensions; disciplinary action for failure to comply

Except as otherwise provided in [NRS 40.670](#), if a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect not more than 1 year after the close of escrow of the initial purchase of the residence, the contractor, subcontractor, supplier or design professional shall make the repairs within 45 days after receiving the written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, subcontractor, supplier or design professional, or timely completion of repairs is not reasonably possible. The contractor, subcontractor, supplier or design professional and claimant may agree in writing to extend the period prescribed by this section. If a contractor or subcontractor fails to comply with this section, the contractor or subcontractor is immediately subject to discipline pursuant to [NRS 624.300](#).

N.R.S. 40.675

40.675. Inspection of repairs

1. A contractor who makes or provides for repairs under [NRS 40.600](#) to [40.695](#), inclusive, may take reasonable steps to prove that the repairs were made and to have them inspected.
2. The provisions of [NRS 40.600](#) to [40.695](#), inclusive, regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

N.R.S. 40.680

40.680. Mediation of certain claims required before action commenced or complaint amended; procedure; appointment of special master; effect of failure to mediate in good faith

1. Except as otherwise provided in this chapter, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor, subcontractor, supplier or design professional and the claimant.
2. The claimant and each party alleged to have caused the constructional defect must select a mediator by agreement. If the claimant and the other parties fail to agree upon a mediator within 20 days after a mediator is first selected by the claimant, any party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 30 days after the matter is submitted to the mediator and shall complete the mediation within 45 days after the matter is submitted to the mediator, unless the parties agree to extend the time.
3. Before the mediation begins:
 - (a) The claimant shall deposit \$50 with the mediation service; and

(b) Each other party shall deposit with the mediation service, in equal shares, the remaining amount estimated by the mediation service as necessary to pay the fees and expenses of the mediator for the first session of mediation and shall deposit additional amounts demanded by the mediation service as incurred for that purpose.

4. Unless otherwise agreed, the total fees for each day of mediation and the mediator must not exceed \$750 per day.

5. If the parties do not reach an agreement concerning the matter during mediation or if any party who is alleged to have caused the constructional defect fails to pay the required fees and appear, the claimant may commence an action or amend a complaint to add a cause of action for the constructional defect in court and:

(a) The reasonable costs and fees of the mediation are recoverable by the prevailing party as costs of the action.

(b) Any party may petition the court in which the action is commenced for the appointment of a special master.

6. A special master appointed pursuant to subsection 5 may:

(a) Review all pleadings, papers or documents filed with the court concerning the action.

(b) Coordinate the discovery of any books, records, papers or other documents by the parties, including the disclosure of witnesses and the taking of the deposition of any party.

(c) Order any inspections on the site of the property by a party and any consultants or experts of a party.

(d) Order settlement conferences and attendance at those conferences by any representative of the insurer of a party.

(e) Require any attorney representing a party to provide statements of legal and factual issues concerning the action.

(f) Refer to the judge who appointed the special master or to the presiding judge of the court in which the action is commenced any matter requiring assistance from the court.

The special master shall not, unless otherwise agreed by the parties, personally conduct any settlement conferences or engage in any ex parte meetings regarding the action.

7. Upon application by a party to the court in which the action is commenced, any decision or other action taken by a special master appointed pursuant to this section may be appealed to the court for a decision.

8. A report issued by a mediator or special master that indicates that a party has failed to appear before the mediator or special master or to mediate in good faith is admissible in the action, but a statement or admission made by a party in the course of mediation is not admissible.

N.R.S. 40.681

40.681. Premediation discovery

Not later than 15 days before the commencement of mediation required pursuant to [NRS 40.680](#) and upon providing 15 days' notice, each party shall provide to the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the claim that are not privileged.

N.R.S. 40.684

40.684. Duties of insurer with respect to settlement conference

1. If a settlement conference is held concerning a claim for a constructional defect, the special master, if any, or the judge presiding over the claim may order a representative of an insurer of a party to attend the settlement conference. If a representative of an insurer is ordered to attend the settlement conference, the insurer shall ensure that the representative is authorized, on behalf of the insurer, to:

- (a) Bind the insurer to any settlement agreement relating to the claim;
- (b) Enter into any agreement relating to coverage that may be available under the party's policy of insurance which is required to carry out any settlement relating to the claim; and
- (c) Commit for expenditure money or other assets available under the party's policy of insurance.

2. If a representative of an insurer who is ordered to attend a settlement conference pursuant to subsection 1 fails to attend the settlement conference or attends but is substantially unprepared to participate, or fails to participate in good faith, the special master or the judge may, on the special master's or the judge's own motion or that of a party, issue any order with regard thereto that is just under the circumstances.

3. In lieu of or in addition to any other sanction, the special master or the judge may require the insurer to pay any reasonable expenses or attorney's fees incurred by a party because of the failure of the insurer or its representative to comply with the provisions of this section or any order issued pursuant to this section, unless the special master or the judge finds that the failure to comply was substantially justified or that any other circumstances make the award of such expenses or fees unjust.

4. Any insurer which conducts business in this State and which insures a party against liability for the claim shall be deemed to have consented to the jurisdiction of the special master or the judge for the purposes of this section.

5. The authority conferred upon the special master or the judge pursuant to this section is in addition to any other authority conferred upon the special master or the judge pursuant to any other statute or any court rule.

N.R.S. 40.687

40.687. Disclosure of information concerning warranties after action is commenced; disclosure of information concerning insurance agreements; compelled production of information

Notwithstanding any other provision of law:

1. A claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner's warranty that is applicable to the claim.

2. The contractor shall, no later than 10 days after a response is made pursuant to this chapter, disclose to the claimant any information about insurance agreements that may be obtained by discovery pursuant to [rule 26\(b\)\(2\) of the Nevada Rules of Civil Procedure](#). Such disclosure does not affect the admissibility at trial of the information disclosed.

3. Except as otherwise provided in subsection 4, if either party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, the other party may petition the court to compel production of the information. Upon receiving such a petition, the court may order the party to produce the required information and may award the petitioning party reasonable attorney's fees and costs incurred in petitioning the court pursuant to this subsection.

4. The parties may agree to an extension of time to produce the information required pursuant to this section.

5. For the purposes of this section, “information about insurance agreements” is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

N.R.S. 40.6882

40.6882. “Complainant” defined

As used in [NRS 40.6884](#) and [40.6885](#), unless the context otherwise requires, “complainant” means a person who makes a claim or files an action against a design professional pursuant to [NRS 40.600](#) to [40.695](#), inclusive.

N.R.S. 40.6884

40.6884. Attorney required to consult expert; required affidavit of attorney; required report of expert

1. Except as otherwise provided in subsection 2, in an action governed by [NRS 40.600](#) to [40.695](#), inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:

- (a) Has reviewed the facts of the case;
- (b) Has consulted with an expert;
- (c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
- (d) Has concluded on the basis of the attorney’s review and the consultation with the expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if the attorney could not consult with an expert and prepare the affidavit before filing the action without causing the action to be impaired or barred by the statute of limitations or repose, or other limitations prescribed by law. If the attorney must submit the affidavit late, the attorney shall file an affidavit concurrently with the service of the first pleading in the action stating the attorney’s reason for failing to comply with subsection 1 and the attorney shall consult with an expert and file the affidavit required pursuant to subsection 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and include, without limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in preparing the expert’s report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

4. In an action brought by a claimant in which an affidavit is required to be filed pursuant to subsection 1:

(a) The report required pursuant to subsection 3 is not required to include the information set forth in paragraphs (c) and (d) of subsection 3 if the claimant or the claimant's attorney files an affidavit, at the time that the affidavit is filed pursuant to subsection 1, stating that the claimant or the claimant's attorney made reasonable efforts to obtain the nonprivileged documents described in paragraph (c) of subsection 3, but was unable to obtain such documents before filing the action;

(b) The claimant or the claimant's attorney shall amend the report required pursuant to subsection 3 to include any documents and information required pursuant to paragraph (c) or (d) of subsection 3 as soon as reasonably practicable after receiving the document or information; and

(c) The court may dismiss the action if the claimant and the claimant's attorney fail to comply with the requirements of paragraph (b).

5. An expert consulted by an attorney to prepare an affidavit pursuant to this section must not be a party to the action.

6. As used in this section, "expert" means a person who is licensed in a state to engage in the practice of professional engineering, land surveying, architecture or landscape architecture.

N.R.S. 40.6885

40.6885. Effect of compliance with or failure to comply with NRS 40.6884

1. The court shall dismiss an action governed by [NRS 40.600](#) to [40.695](#), inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, if the attorney for the complainant fails to:

(a) File an affidavit required pursuant to [NRS 40.6884](#);

(b) File a report required pursuant to subsection 3 of [NRS 40.6884](#); or

(c) Name the expert consulted in the affidavit required pursuant to subsection 1 of [NRS 40.6884](#).

2. The fact that an attorney for a complainant has complied or failed to comply with the provisions of [NRS 40.6884](#) is admissible in the action.

N.R.S. 40.6887

40.6887. Submission of questions or disputes concerning defects to State Contractors' Board; regulations

1. A claimant or any contractor, subcontractor, supplier or design professional may submit a question or dispute to the State Contractors' Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals.

2. If a question or dispute is submitted to the State Contractors' Board pursuant to this section, the State Contractors' Board shall, pursuant to its regulations, rules and procedures, respond to the question or investigate the dispute and render a decision. Nothing in this section authorizes the State Contractors' Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section.

3. Not later than 30 days after a question or dispute is submitted to the State Contractors' Board pursuant to subsection 1, the State Contractors' Board shall respond to the question or render its decision. The response or decision of the State Contractors' Board:

(a) Is not binding and is not subject to judicial review pursuant to the provisions of chapters 233B and 624 of NRS; and

(b) Is not admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.

4. The provisions of this chapter do not preclude a claimant or a contractor, subcontractor, supplier or design professional from pursuing any remedy otherwise available from the State Contractors' Board pursuant to the provisions of chapter 624 of NRS concerning a constructional defect.

5. If an action for a constructional defect has been commenced, the court shall not stay or delay any proceedings before the court pending an answer to a question or decision concerning a dispute submitted to the State Contractors' Board.

6. The State Contractors' Board shall adopt regulations necessary to carry out the provisions of this section and may charge and collect reasonable fees from licensees to cover the cost of carrying out its duties pursuant to this section.

N.R.S. 40.689

40.689. Preference given to action; action may be assigned to senior judge; assessment of additional expenses

1. Upon petition by a party:

(a) The court shall give preference in setting a date for the trial of an action commenced pursuant to [NRS 40.600](#) to [40.695](#), inclusive; and

(b) The court may assign an action commenced pursuant to [NRS 40.600](#) to [40.695](#), inclusive, to a senior judge.

2. If the action is assigned to a senior judge upon petition by a party:

(a) Any additional expenses caused by the assignment must be borne equally by each party involved; or

(b) The judge may distribute any additional expenses among the parties as the judge deems appropriate.

N.R.S. 40.690

40.690. Limitation on bringing claim against governmental entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate

1. A claim governed by [NRS 40.600](#) to [40.695](#), inclusive, may not be brought by a claimant or contractor against a government, governmental agency or political subdivision of a government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to [NRS 40.600](#) to [40.695](#), inclusive. The settlement of such a claim does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.

2. A contractor or claimant may require a party against whom the contractor or claimant asserts a claim governed by [NRS 40.600](#) to [40.695](#), inclusive, to appear and participate in proceedings held pursuant to those sections as if the party were a contractor and the party requiring the

appearance were a claimant. The party must receive notice of the proceedings from the contractor or claimant.

N.R.S. 40.692

40.692. Notice not required to be given to intervener in action

A claimant who commences an action for a constructional defect is not required to give written notice of a defect pursuant to [NRS 40.645](#) to any person who intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

1. For the purposes of [NRS 40.645](#), the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and
2. The provisions of [NRS 40.600](#) to [40.695](#), inclusive, apply to the person after that date.

N.R.S. 40.695

40.695. Tolling of statutes of limitation or repose; applicability

1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by [NRS 40.600](#) to [40.695](#), inclusive, are tolled from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to [NRS 40.680](#).

2. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

N.R.S. 40.750

40.750. Fraud against financial institution or other lender for purpose of obtaining loan secured by lien on real property

1. As used in this section, “financial institution” means a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary or affiliate of a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, which is authorized to transact business in this State and which makes or acquires, in whole or in part, any loan of the kind described in subsection 2.

2. Except as otherwise provided in subsection 5, a person who, for the purpose of obtaining a loan secured by a lien on real property, knowingly conceals a material fact, or makes a false statement concerning a material fact knowing that the statement is false, is liable to any financial institution or other lender which relied upon the absence of that concealed fact or on that false statement for any damages it sustains because of the fraud.

3. In addition to its actual damages, a financial institution or other lender may recover exemplary or punitive damages in an amount not to exceed 50 percent of the actual damages awarded.

4. The cause of action provided by this section:

(a) Is not, for the purposes of [NRS 40.430](#), an action for the recovery of any debt or an action for the enforcement of any right secured by mortgage or lien upon real estate.

(b) Is in addition to and not in substitution for any right of foreclosure existing in favor of the financial institution or other lender. Any recovery pursuant to this section does not limit the amount of a judgment awarded pursuant to [NRS 40.459](#), but the financial institution or other lender is not entitled to recover actual damages more than once for the same loss.

5. The provisions of this section do not apply to any loan which is secured by a lien on real property used for residential purposes if:

- (a) The residence is a single-family dwelling occupied by the person obtaining the loan, as represented by the person in connection with the person's application for the loan; and
- (b) The loan is for the principal amount of \$150,000 or less.

N.R.S. 106.020

106.020. Adoption by reference before March 1, 1967

In any mortgage of real or personal, or real and personal property, made prior to March 1, 1967, the parties may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. Covenant No. 1. That the mortgagor will perform each and all of the promises and obligations of the mortgage and all covenants thereof, adopted by reference as provided herein, and will pay the indebtedness therein described with interest as therein provided.
2. Covenant No. 2. That the mortgagor will pay a reasonable attorney fee in case suit is started for the collection of the mortgage debt or any part thereof, and will pay all costs and expenses of the suit, whether the suit be prosecuted to judgment or not, and will also pay all costs of any sale made thereunder without court proceedings, including in case of such sale an attorney fee equal to percent of the amount due at the date of the sale upon the principal and interest of the mortgage debt.
3. Covenant No. 3. That the mortgagor will pay, in lawful money of the United States, all sums expended or advanced by the mortgagee for taxes or assessments levied or assessed against the mortgaged property, fire insurance upon the same, or advanced for any other purpose provided for by the terms of the mortgage or the covenants thereof adopted by reference, together with interest upon any such sums from the date of the payment by the mortgagee until repaid, at the rate of percent per annum.
4. Covenant No. 4. That this mortgage will be security for the payment in lawful money of the United States of any and all moneys that may hereafter become due or payable from the mortgagor to the mortgagee, from any cause whatsoever.
5. Covenant No. 5. That this mortgage shall be security for any and all renewals of the mortgage debt or of the promissory note or notes evidencing the same, which may be executed and delivered by the mortgagor to the mortgagee, and any and all additional or future advances or loans which may be made by the mortgagee to the mortgagor.
6. Covenant No. 6. That the mortgagor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which are, or shall hereafter be, or appear to be, a lien upon the mortgaged property, or any part thereof, and the mortgagor will pay all interest or installments due on any prior encumbrance. And in default thereof, the mortgagee may, without demand or notice, pay the same and the mortgagee shall be the sole judge of the legality or validity of such taxes, assessments, charges or encumbrances and the amount necessary to be paid in the satisfaction or discharge thereof.
7. Covenant No. 7. That the mortgagor will at all times keep the buildings and improvements, which are now or which shall hereafter be erected upon the mortgaged premises, insured against loss or damage by fire to the amount of at least \$ in some reliable insurance company or companies, approved by the mortgagee, and will deliver the policies therefor to the mortgagee to be held by the mortgagee as further security. In default of the mortgagor to obtain such insurance, the mortgagee may procure the same, not exceeding the amount aforesaid, and may pay and expend for premiums for such insurance such sums of money as the mortgagee shall deem necessary.

8. Covenant No. 8. That if there be more than one mortgagor in a mortgage, all covenants, terms, promises and obligations set forth in the mortgage or adopted by reference are agreed to be joint and several covenants, terms, conditions, promises and obligations of each of the mortgagors thereto.

9. Covenant No. 9. That this mortgage is made upon the express condition that if all sums secured hereby shall be paid at the time, place and manner mentioned in the mortgage, or in any of the covenants provided by this section which shall be adopted by reference, the mortgage and the estate therein mentioned and described shall cease, determine and be void, and the mortgagor, for himself or herself, his or her heirs, executors, administrators, successors and assigns, covenants and agrees to pay in lawful money of the United States to the mortgagee all sums secured by the mortgage, or by the terms of the covenants adopted by reference at the time and in the manner therein provided, and if default be made in the payment of the principal or interest or any part thereof described in the mortgage, or of any promissory note or other instrument or obligation for which such mortgage is given as security, the whole of the principal sum for which the mortgage is given, which shall be then unpaid, shall become forthwith payable, although the time expressed in the promissory note or notes or other obligation or obligations shall not have arrived.

10. Covenant No. 10. That it is understood and agreed that all the natural increase, during the existence of this mortgage, of any livestock which shall at any time be subject to the lien hereof, and all other livestock of the same kind as that described in the mortgage which in any manner is acquired by the mortgagor during the life of the mortgage, and all wool grown upon or produced by any sheep which shall at any time be subject to the lien of the mortgage, is property mortgaged hereunder and subject to the lien of the mortgage.

11. Covenant No. 11. That the mortgagor covenants and agrees to keep all livestock mortgaged or subject to the lien of the mortgage in good condition, and care for, inspect and protect the same, and provide and maintain sufficient blooded, graded breeding stock to properly serve any female livestock at any time subject to the lien of the mortgage, and in general to exercise such care in rearing, branding, ranging and feeding all livestock subject to the lien of the mortgage as is consistent and in accord with good business, and with the customary manner of handling that kind of livestock which is subject to the lien hereof. Should the livestock or any part thereof at any time, in the opinion of the mortgagee, require care, attention or protection other than that provided by the mortgagor, then the mortgagee may enter or cause entry to be made upon any property where the mortgaged livestock or any part thereof may be found, and assume control, custody and possession of the same, and at the expense of the mortgagor care for, protect, and attend to the same in such manner as it may deem necessary.

12. Covenant No. 12. That it is further understood and agreed that the mortgagee, its agents or attorneys, shall have the right at all times to inspect and examine any property which may at any time be subject to the lien of the mortgage, for the purpose of ascertaining whether or not the security given is being lessened, diminished, depleted or impaired, and if such inspection or examination shall disclose, in the judgment of the mortgagee, that the security given or the property mortgaged is being lessened or impaired, such condition shall be deemed a breach of the covenants of the mortgage on the part of the mortgagor.

13. Covenant No. 13. That upon default of any of the terms, conditions, covenants or agreements of any chattel mortgage whereby livestock is mortgaged, it is agreed that the mortgagee may, without foreclosure and without legal proceedings and without any previous demand therefor, with the aid or assistance of any person or persons, enter upon the premises and ranges of the

mortgagor or such place or places as any of the property subject to the lien of the mortgage is or may be found, and take, lead, drive or carry away the mortgaged property or any part thereof, and with or without notice to the mortgagor, at either public or private sale, sell and dispose of the same or so much thereof as may be necessary to pay the amount and sums secured by the mortgage, for the best price it can obtain, and out of the moneys arising therefrom it shall retain and pay the sum or sums then due or payable under the lien of the mortgage, and interest thereon, and all charges and expenses incurred in gathering, feeding, caring for, and selling the property or any part thereof, and any other expenses and charges incurred by the mortgagee, and all other sums secured by any of the terms of the mortgage, and any overplus shall be paid to the mortgagor. The mortgagee is expressly authorized and empowered, upon any such sale, to make and execute such bills of sale or other conveyances necessary to convey to the purchaser or purchasers thereof an absolute title in the property so sold. It shall not be necessary for the purchaser or purchasers at any such sale or sales purported to be made under the powers granted hereunder to inquire into or in any way be or become responsible for the actual existence of the contingency or contingencies upon which such sale or sales shall be made by the mortgagee, and title to the purchaser or purchasers of the property so sold shall be good and sufficient; and the mortgagor agrees that the decision of the mortgagee as to the actual existence of the contingency or contingencies upon which the sale or sales as aforesaid is or may be predicated shall be conclusive and binding upon the mortgagor.

14. Covenant No. 14. That it is expressly agreed by and between the mortgagor and mortgagee that, in the event suit shall be instituted for the foreclosure of the mortgage, the mortgagee may, at its option and without notice, apply for the appointment of a receiver for the purpose of taking possession of the mortgaged property pending foreclosure, and with the approval of the court wherein such suit is instituted, such receiver as may be designated by the mortgagee shall be appointed. All costs in connection with the appointment of a receiver or in connection with the discharge of the duties of the receiver shall be taxed as costs in the suit.

15. Covenant No. 15. That it is expressly agreed and understood that in any sale of any of the property at any time subject to the lien of the mortgage, under the terms of the mortgage or any of the covenants adopted by reference, the property may, at the option of the mortgagee, be sold in one lot or parcel or in such other lots or parcels as may be designated by the mortgagee; and it is further covenanted and agreed that the mortgagee may become the purchaser of the property or any part thereof at any sale made under any of the terms of the mortgage, or upon foreclosure.

N.R.S. 106.025

106.025. Adoption by reference on and after March 1, 1967

In any mortgage of real property, made on or after March 1, 1967, the parties may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. Covenant No. 1. That the mortgagor will perform each and all of the promises and obligations of the mortgage and all covenants thereof, adopted by reference as provided herein, and will pay the indebtedness therein described with interest as therein provided.

2. Covenant No. 2. That the mortgagor will pay a reasonable attorney fee in case suit is started for the collection of the mortgage debt or any part thereof, and will pay all costs and expenses of the suit, whether the suit be prosecuted to judgment or not, and will also pay all costs of any sale made thereunder without court proceedings, including in case of such sale an attorney fee equal to percent of the amount due at the date of the sale upon the principal and interest of the mortgage debt.

3. Covenant No. 3. That the mortgagor will pay, in lawful money of the United States, all sums expended or advanced by the mortgagee for taxes or assessments levied or assessed against the mortgaged property, fire insurance upon the same, or advanced for any other purpose provided for by the terms of the mortgage or the covenants thereof adopted by reference, together with interest upon any such sums from the date of the payment by the mortgagee until repaid, at the rate of percent per annum.
4. Covenant No. 4. That this mortgage will be security for the payment in lawful money of the United States of any and all moneys that may hereafter become due or payable from the mortgagor to the mortgagee, from any cause whatsoever.
5. Covenant No. 5. That this mortgage shall be security for any and all renewals of the mortgage debt or of the promissory note or notes evidencing the same, which may be executed and delivered by the mortgagor to the mortgagee, and any and all additional or future advances or loans which may be made by the mortgagee to the mortgagor.
6. Covenant No. 6. That the mortgagor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which are, or shall hereafter be, or appear to be, a lien upon the mortgaged property, or any part thereof, and the mortgagor will pay all interest or installments due on any prior encumbrance. And in default thereof, the mortgagee may, without demand or notice, pay the same and the mortgagee shall be the sole judge of the legality or validity of such taxes, assessments, charges or encumbrances and the amount necessary to be paid in the satisfaction or discharge thereof.
7. Covenant No. 7. That the mortgagor will at all times keep the buildings and improvements, which are now or which shall hereafter be erected upon the mortgaged premises, insured against loss or damage by fire to the amount of at least \$ in some reliable insurance company or companies, approved by the mortgagee, and will deliver the policies therefor to the mortgagee to be held by the mortgagee as further security. In default of the mortgagor to obtain such insurance, the mortgagee may procure the same, not exceeding the amount aforesaid, and may pay and expend for premiums for such insurance such sums of money as the mortgagee shall deem necessary.
8. Covenant No. 8. That if there be more than one mortgagor in a mortgage, all covenants, terms, promises and obligations set forth in the mortgage or adopted by reference are agreed to be joint and several covenants, terms, conditions, promises and obligations of each of the mortgagors thereto.
9. Covenant No. 9. That this mortgage is made upon the express condition that if all sums secured hereby shall be paid at the time, place and manner mentioned in the mortgage, or in any of the covenants provided by this section which shall be adopted by reference, the mortgage and the estate therein mentioned and described shall cease, determine and be void, and the mortgagor, for himself or herself, his or her heirs, executors, administrators, successors and assigns, covenants and agrees to pay in lawful money of the United States to the mortgagee all sums secured by the mortgage, or by the terms of the covenants adopted by reference at the time and in the manner therein provided, and if default be made in the payment of the principal or interest or any part thereof described in the mortgage, or of any promissory note or other instrument or obligation for which such mortgage is given as security, the whole of the principal sum for which the mortgage is given, which shall be then unpaid, shall become forthwith payable, although the time expressed in the promissory note or notes or other obligation or obligations shall not have arrived.

10. Covenant No. 10. That it is further understood and agreed that the mortgagee, its agents or attorneys, shall have the right at all times to inspect and examine any property which may at any time be subject to the lien of the mortgage, for the purpose of ascertaining whether or not the security given is being lessened, diminished, depleted or impaired, and if such inspection or examination shall disclose, in the judgment of the mortgagee, that the security given or the property mortgaged is being lessened or impaired, such condition shall be deemed a breach of the covenants of the mortgage on the part of the mortgagor.

11. Covenant No. 11. That it is expressly agreed by and between the mortgagor and mortgagee that, in the event suit shall be instituted for the foreclosure of the mortgage, the mortgagee, may, at its option and without notice, apply for the appointment of a receiver for the purpose of taking possession of the mortgaged property pending foreclosure, and with the approval of the court wherein such suit is instituted, such receiver as may be designated by the mortgagee shall be appointed. All costs in connection with the appointment of a receiver or in connection with the discharge of the duties of the receiver shall be taxed as costs in the suit.

12. Covenant No. 12. That it is expressly agreed and understood that in any sale of any of the property at any time subject to the lien of the mortgage, under the terms of the mortgage or any of the covenants adopted by reference, the property may, at the option of the mortgagee, be sold in one lot or parcel or in such other lots or parcels as may be designated by the mortgagee; and it is further covenanted and agreed that the mortgagee may become the purchaser of the property or any part thereof at any sale made under any of the terms of the mortgage, or upon foreclosure.

N.R.S. 106.030

106.030. Mortgage secures performance of covenants adopted by reference

Whenever, by the terms of any mortgage, any of the covenants in [NRS 106.020](#) or [106.025](#) are adopted as a part thereof by reference, as provided in [NRS 106.020](#) to [106.050](#), inclusive, the mortgage is intended to secure and does secure the performance of the terms and conditions of the mortgage and all of the covenants so adopted by reference.

N.R.S. 106.040

106.040. Adoption by reference in instrument

1. In order to adopt by reference any of the covenants, agreements, obligations, rights and remedies in [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage whichever of the following is appropriate:

(a) “The following covenants, Nos., and (inserting the respective numbers) of [NRS 106.020](#), are hereby adopted and made a part of this mortgage.”

(b) “The following covenants, Nos., and (inserting the respective numbers) of [NRS 106.025](#), are hereby adopted and made a part of this mortgage.”

2. In order to fix the amount of counsel fees under Covenant No. 2 of [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage: “Covenant No. 2,” and set out thereafter the percentage to be allowed.

3. In order to fix the rate of interest under Covenant No. 3 of [NRS 106.020](#) or [106.025](#), it shall only be necessary to state in the mortgage: “Covenant No. 3,” and set out thereafter the rate of interest to be charged thereunder.

4. A mortgage, in order to fix the amount of insurance to be carried, need not reincorporate the provisions of Covenant No. 7 of [NRS 106.020](#) or [106.025](#), but may merely state the following: “Covenant No. 7,” and set out thereafter the amount of insurance to be carried.

N.R.S. 106.050

106.050. Parties may enter into different or additional covenants

Nothing in [NRS 106.020](#) to [106.040](#), inclusive, prevents the parties to any mortgage from entering into any other, different or additional covenants or agreements than those set out in [NRS 106.020](#) or [106.025](#).

N.R.S. 106.105

106.105. Contributions; payment of obligations; notice regarding and disposition of excess money; civil penalty

1. Except as otherwise provided in subsection 2, a lender who requires a borrower to make advance contributions to an impound trust account, or an account of similar name, for the payment of taxes, insurance premiums or other obligations related to the encumbered property shall:

(a) Require contributions in an amount reasonably necessary to pay the obligations as they become due.

(b) Unless money in the account is insufficient, pay in a timely manner the obligations as they become due.

(c) Within 30 days after the completion of its annual review of the account, notify the borrower:

(1) Of the amount by which the contributions exceed the amount reasonably necessary to pay the annual obligations due from the account; and

(2) That the borrower may specify the disposition of the excess money within 20 days after receipt of the notice. If the borrower fails to specify such a disposition within that time, the lender shall maintain the excess money in the account.

A lender who violates any provision of this subsection is liable to the borrower for a civil penalty of not more than \$1,000.

2. A lender, to recover previous deficiencies in contributions to an impound trust account, may require contributions to the account in an amount greater than that reasonably necessary to pay the obligations as they become due. The borrower is otherwise entitled to the amount by which the borrower's contributions to the account exceed the amount reasonably necessary to pay the annual obligations due from the account, together with interest thereon at the rate established pursuant to [NRS 99.040](#).

3. As used in this section:

(a) "Borrower" means a mortgagor, grantor of a deed of trust or other obligor on a loan secured by a lien upon real property.

(b) "Lender" means a mortgagee, beneficiary of a deed of trust or other obligee on a loan secured by a lien upon real property, and his or her successor in interest.

N.R.S. 106.195

106.195. Mortgage of estate for years

Mortgages may be made upon an estate for years, however created, unless prohibited by the instrument which created such estate.

N.R.S. 106.200

106.200. Effect of recorded mortgage upon possessory claims to public lands or mining claims

A mortgage for a good and valuable consideration upon possessory claims to public lands, all buildings and improvements upon such lands, and all quartz and mining claims, acknowledged in manner and form as mortgages upon real property are required by law to be acknowledged, and recorded in the office of the recorder in the county in which the property is situated, shall have the same effect against third persons as mortgages upon real property.

N.R.S. 106.210

106.210. Recording of assignments of mortgages or beneficial interests in deeds of trust; constructive notice; effect of unrecorded assignments

1. Any assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded prior to March 27, 1935, and any assignment of the beneficial interest under a deed of trust must be recorded in the office of the recorder of the county in which the property is located, and from the time any of the same are so filed for record shall operate as constructive notice of the contents thereof to all persons. A mortgage of real property, or a mortgage of personal property or crops recorded prior to March 27, 1935, which has been assigned may not be enforced unless and until the assignment is recorded pursuant to this subsection. If the beneficial interest under a deed of trust has been assigned, the trustee under the deed of trust may not exercise the power of sale pursuant to [NRS 107.080](#) unless and until the assignment is recorded pursuant to this subsection.
2. Each such filing or recording must be properly indexed by the recorder.

N.R.S. 106.220

106.220. Filing and recording of instruments subordinating or waiving priority of mortgages or deeds of trust; constructive notice; effect of unrecorded instruments

1. Any instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority, must, in case it concerns only one or more mortgages or deeds of trust of, liens upon or interests in real property, together with, or in the alternative, one or more mortgages of, liens upon or interests in personal property or crops, the instruments or documents evidencing or creating which have been recorded prior to March 27, 1935, be recorded in the office of the recorder of the county in which the property is located, and from the time any of the same are so filed for record operates as constructive notice of the contents thereof to all persons. The instrument is not enforceable under this chapter or chapter 107 of NRS unless and until it is recorded.
2. Each such filing or recording must be properly indexed by the recorder.

N.R.S. 106.240

106.240. Extinguishment of lien created by mortgage or deed of trust upon real property

The lien heretofore or hereafter created of any mortgage or deed of trust upon any real property, appearing of record, and not otherwise satisfied and discharged of record, shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged.

N.R.S. 106.260

106.260. Discharge and assignment: Marginal entries; discharge or release must be recorded when mortgage or lien recorded by microfilm

1. Any mortgage or lien, that has been or may hereafter be recorded, may be discharged or assigned by an entry on the margin of the record thereof, signed by the mortgagee or the mortgagee's personal representative or assignee, acknowledging the satisfaction of or value received for the mortgage or lien and the debt secured thereby, in the presence of the recorder or the recorder's deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release or assignment duly acknowledged and recorded. Such marginal discharge or assignment shall in each case be properly indexed by the recorder.
2. In the event that the mortgage or lien has been recorded by a microfilm or other photographic process, a marginal release may not be used and a duly acknowledged discharge or release of such mortgage or lien must be recorded.

N.R.S. 106.270

106.270. Discharge of mortgages on filing of certificates specifying satisfaction or payment

Any recorded mortgage shall also be discharged upon the record thereof by the recorder in whose custody it shall be, whenever there shall be presented to the recorder a certificate executed by the mortgagee, the mortgagee's personal representative or assignee, acknowledged, or proved and certified, as prescribed in NRS, to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

N.R.S. 106.280

106.280. Certificates of discharge: Recording

Every certificate of discharge of a recorded mortgage, and the proof or acknowledgment thereof, must be recorded at full length, and a reference must be made to the county book containing such record in the minutes of the discharge of such mortgage made by the recorder upon the record thereof.

N.R.S. 106.290

106.290. Recording of discharge of mortgage by mortgagee; liability for failure to record discharge; requirements for release of mortgage when discharge not recorded; liability for improperly recording release; criminal penalty

1. Within 21 calendar days after receiving written notice that a debt secured by a mortgage has been paid or otherwise satisfied or discharged, the mortgagee shall cause a discharge of the mortgage to be recorded pursuant to [NRS 106.260](#) or [106.270](#) if the mortgagor, the mortgagor's heirs or assigns have fully performed the conditions of the mortgage.
2. If a mortgagee fails to comply with the provisions of this section, the mortgagee is liable in a civil action to the mortgagor, the mortgagor's heirs or assigns for:
 - (a) The sum of \$1,000;
 - (b) Any actual damages caused by the failure of the mortgagee to comply with the provisions of this section; and
 - (c) Reasonable attorney's fees and the costs of bringing the action.
3. Except as otherwise provided in this subsection, if a mortgagee fails to cause a discharge of the mortgage to be recorded pursuant to subsection 1 within 75 calendar days, a title insurer may prepare and cause to be recorded a release of the mortgage. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the mortgage to the mortgagor and mortgagee, or their successors in interest, at the last known address of each such person. A

release prepared and recorded pursuant to this subsection shall be deemed a discharge of the mortgage. The title insurer shall not cause a release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the mortgagor, the mortgagee or a successor in interest.

4. The release prepared pursuant to subsection 3 must set forth:

- (a) The name of the mortgagor;
- (b) The name of the mortgagee;
- (c) The recording reference to the mortgage;
- (d) A statement that the debt secured by the mortgage has been paid in full or otherwise satisfied or discharged;
- (e) The date and amount of payment or other satisfaction or discharge; and
- (f) The name and address of the title insurer issuing the release.

5. A release prepared and recorded pursuant to subsection 3 does not relieve a mortgagee of the requirements imposed by subsections 1 and 2.

6. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a release of a mortgage pursuant to this section is liable in a civil action for actual damages and for a reasonable attorney's fee and the costs of bringing the action to any person who is injured because of the improper recordation of the release.

7. Any person who willfully violates this section is guilty of a misdemeanor.

8. As used in this section, "title insurer" has the meaning ascribed to it in [NRS 692A.070](#).

106.300. Definitions

As used in NRS 106.300 to [106.400](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 106.310](#) to [106.345](#), inclusive, have the meanings ascribed to them in those sections.

N.R.S. 106.310

106.310. "Borrower" defined

"Borrower" means a mortgagor, grantor of a deed of trust or other debtor.

N.R.S. 106.320

106.320. "Future advance" defined

"Future advance" means a loan of money to a borrower pursuant to an agreement but made after the agreement is executed.

N.R.S. 106.330

106.330. "Instrument" defined

"Instrument" means a mortgage, deed of trust or other instrument encumbering real property as security for the repayment of a debt.

N.R.S. 106.340

106.340. "Lender" defined

"Lender" means a mortgagee, beneficiary of a deed of trust or other creditor holding an instrument.

N.R.S. 106.345

106.345. “Principal” defined

“Principal” means the money a lender advances to a borrower as a loan which, separately or together with other advances, is intended to be evidenced by the face amount of a note, bond or other similar document. The term does not include any interest, advances made to protect security or advances which would not have been made if the borrower and all other parties to the agreement relating to the loan or future advances had complied with its terms even if the obligations contained in the agreement were secured by an instrument.

N.R.S. 106.350**106.350. Applicability**

The provisions of [NRS 106.300](#) to [106.400](#), inclusive, apply only to an instrument or supplement or amendment to an instrument that states clearly that it is to be governed by those provisions.

N.R.S. 106.360**106.360. Execution, enforceability, contents and amendment of instrument**

1. A borrower may execute an instrument encumbering the borrower's real property to secure future advances from a lender within a mutually agreed maximum amount of principal. The instrument or an amendment to the instrument is enforceable only if the instrument or the amendment is recorded in the office of the county recorder of the county in which the real property is located and the party seeking to enforce the instrument or the amendment is an original party to the instrument or amendment or the current assignee of record.

2. The instrument must state clearly:

- (a) That it secures future advances; and
- (b) The maximum amount of principal to be secured.

3. The maximum amount of advances of principal to be secured by the instrument may increase or decrease from time to time by amendment of the instrument.

N.R.S. 106.370**106.370. Priority of lien**

1. The priority of a lien for future advances dates from the time that the instrument is recorded in the office of the county recorder of the county in which the property is located, whether or not the:

- (a) Future advances are obligatory or at the option of the lender; or
- (b) Lender has notice of an intervening lien.

2. If an amendment to an instrument is recorded which increases the maximum amount of indebtedness secured by the instrument, the priority of any lien for future advances of principal thereafter which exceed the maximum amount of principal of the original indebtedness dates from the time the amendment is recorded in the office of the county recorder of the county in which the property is located.

N.R.S. 106.380**106.380. Notice of election to terminate operation of instrument; recording of statement by lender or borrower; change of notice address by lender**

1. A borrower may at any time personally deliver or send by certified mail, return receipt requested, written notice to the lender stating that the borrower elects to terminate the operation

of an instrument as security for future advances of principal made after the lender receives the notice. The notice:

(a) Must be delivered or sent to the lender at each address provided for the lender in the instrument or, if applicable, at each address provided for the lender in a document which is effective pursuant to subsection 5; and

(b) Does not become effective until it is received by the lender.

2. Within 4 business days after receiving the notice, the lender must record in the office of the county recorder in which the instrument was recorded a statement that:

(a) Expressly refers to the instrument by:

(1) The date on which the instrument was recorded in the office of the county recorder; and

(2) The book, page and document number, as applicable, of the instrument as recorded;

(b) Contains the legal description of the encumbered real property;

(c) Affirms that the notice given pursuant to subsection 1 was received by the lender, and identifies the date of that receipt; and

(d) Separately sets forth:

(1) The amount of principal owed that is secured by the instrument; and

(2) The outstanding interest accrued on the principal described in subparagraph (1) as of the date the statement of the lender is recorded.

3. If the lender does not record the statement required by subsection 2 within the period set forth in subsection 2, the borrower may record a similar statement. The borrower's statement has the same effect as the lender's statement would have had if the lender had recorded the statement required by subsection 2.

4. If a lender wishes to receive notices pursuant to this section at an address other than the address for the lender provided in the instrument, if any, the lender must:

(a) Record, in the office of the county recorder in which the instrument was recorded, a document entitled "Change of Notice Address" that includes, without limitation, the address at which the lender wishes to receive notices pursuant to this section; and

(b) Personally deliver or send by certified mail, return receipt requested, a copy of the document to the borrower at each address provided for the borrower in the instrument, if any.

5. A document recorded pursuant to subsection 4 does not become effective until it is received by the borrower.

N.R.S. 106.390

106.390. Effect of notice of termination

Receipt of notice of termination by the lender does not affect the priority of any lien for any future advances previously made, obligations previously incurred or interest accrued thereon.

N.R.S. 106.400

106.400. Advances made after notice of termination

Future advances of principal made to a borrower after the receipt of the notice of termination by the lender are not secured by the instrument. The principal amount of indebtedness secured by the instrument is limited to the amount stated by the lender in the lender's recorded statement.

N.R.S. 107.015

107.015. Definitions

As used in this chapter:

1. “Facsimile machine” means a device which receives and copies a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.
2. “Title insurer” has the meaning ascribed to it in [NRS 692A.070](#).

N.R.S. 107.020

107.020. Transfers in trust of real property to secure obligations

Transfers in trust of any estate in real property may be made after March 29, 1927, to secure the performance of an obligation or the payment of any debt.

N.R.S. 107.025

107.025. Estate for years: Encumbrance by deed of trust; foreclosure by exercise of power of sale

A deed of trust may encumber an estate for years however created, including a lease of a dwelling unit of a cooperative housing corporation, unless prohibited by the instrument creating the estate, and foreclosure may be had by the exercise of a power of sale in accordance with the provisions of this chapter.

N.R.S. 107.026

107.026. Priority of certain deeds of trust over other liens

Except as otherwise provided in [NRS 104.9335](#), a deed of trust given to secure a loan made to purchase the real property on which the deed of trust is given has priority over all other liens created against the purchaser before the purchaser acquires title to the real property.

N.R.S. 107.027

107.027. Lease of dwelling unit of cooperative housing corporation: Shares in corporation appurtenant to lease; encumbrances

1. The shares which accompany a lease of a dwelling unit in a cooperative housing corporation are appurtenant to the lease. Any security interest in or lien on the lease encumbers the shares whether or not the instrument creating the interest or lien expressly includes the shares.
2. No security interest in or lien on shares of a cooperative housing corporation is effective unless the instrument which purports to create the interest or lien encumbers the lease to which the shares pertain.

N.R.S. 107.028

107.028. Trustees: Qualifications; limitations on powers; appointment of new trustee; duties; immunity from liability for certain good faith errors; damages in certain civil actions

1. The trustee under a deed of trust must be:
 - (a) An attorney licensed to practice law in this State;
 - (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS;
 - (c) A person licensed pursuant to chapter 669 of NRS;
 - (d) A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;

- (e) A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;
 - (f) A person who is appointed as a fiduciary pursuant to [NRS 662.245](#);
 - (g) A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;
 - (h) A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;
 - (i) A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or
 - (j) A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS.
2. A trustee under a deed of trust must not be the beneficiary of the deed of trust for the purposes of exercising the power of sale pursuant to [NRS 107.080](#).
3. A trustee under a deed of trust must not:
- (a) Lend its name or its corporate capacity to any person who is not qualified to be the trustee under a deed of trust pursuant to subsection 1.
 - (b) Act individually or in concert with any other person to circumvent the requirements of subsection 1.
4. A beneficiary of record may replace its trustee with another trustee. The appointment of a new trustee is not effective until the substitution of trustee is recorded in the office of the recorder of the county in which the real property is located.
5. The trustee does not have a fiduciary obligation to the grantor or any other person having an interest in the property which is subject to the deed of trust. The trustee shall act impartially and in good faith with respect to the deed of trust and shall act in accordance with the laws of this State. A rebuttable presumption that a trustee has acted impartially and in good faith exists if the trustee acts in compliance with the provisions of [NRS 107.080](#). In performing acts required by [NRS 107.080](#), the trustee incurs no liability for any good faith error resulting from reliance on information provided by the beneficiary regarding the nature and the amount of the default under the obligation secured by the deed of trust if the trustee corrects the good faith error not later than 20 days after discovering the error.
6. If, in an action brought by a grantor, a person who holds title of record or a beneficiary in the district court in and for the county in which the real property is located, the court finds that the trustee did not comply with this section, any other provision of this chapter or any applicable provision of chapter 106 or 205 of NRS, the court must award to the grantor, the person who holds title of record or the beneficiary:
- (a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;
 - (b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and
 - (c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award.

N.R.S. 107.030

107.030. Adoption of covenants by reference

Every deed of trust made after March 29, 1927, may adopt by reference all or any of the following covenants, agreements, obligations, rights and remedies:

1. Covenant No. 1. That grantor agrees to pay and discharge at maturity all taxes and assessments and all other charges and encumbrances which now are or shall hereafter be, or appear to be, a lien upon the trust premises, or any part thereof; and that grantor will pay all interest or installments due on any prior encumbrance, and that in default thereof, beneficiary may, without demand or notice, pay the same, and beneficiary shall be sole judge of the legality or validity of such taxes, assessments, charges or encumbrances, and the amount necessary to be paid in satisfaction or discharge thereof.

2. Covenant No. 2. That the grantor will at all times keep the buildings and improvements which are now or shall hereafter be erected upon the premises insured against loss or damage by fire, to the amount of at least \$, by some insurance company or companies approved by beneficiary, the policies for which insurance shall be made payable, in case of loss, to beneficiary, and shall be delivered to and held by the beneficiary as further security; and that in default thereof, beneficiary may procure such insurance, not exceeding the amount aforesaid, to be effected either upon the interest of trustee or upon the interest of grantor, or his or her assigns, and in their names, loss, if any, being made payable to beneficiary, and may pay and expend for premiums for such insurance such sums of money as the beneficiary may deem necessary.

3. Covenant No. 3. That if, during the existence of the trust, there be commenced or pending any suit or action affecting the conveyed premises, or any part thereof, or the title thereto, or if any adverse claim for or against the premises, or any part thereof, be made or asserted, the trustee or beneficiary may appear or intervene in the suit or action and retain counsel therein and defend same, or otherwise take such action therein as they may be advised, and may settle or compromise same or the adverse claim; and in that behalf and for any of the purposes may pay and expend such sums of money as the trustee or beneficiary may deem to be necessary.

4. Covenant No. 4. That the grantor will pay to trustee and to beneficiary respectively, on demand, the amounts of all sums of money which they shall respectively pay or expend pursuant to the provisions of the implied covenants of this section, or any of them, together with interest upon each of the amounts, until paid, from the time of payment thereof, at the rate of percent per annum.

5. Covenant No. 5. That in case grantor shall well and truly perform the obligation or pay or cause to be paid at maturity the debt or promissory note, and all moneys agreed to be paid, and interest thereon for the security of which the transfer is made, and also the reasonable expenses of the trust in this section specified, then the trustee, its successors or assigns, shall reconvey to the grantor all the estate in the premises conveyed to the trustee by the grantor. Any part of the trust property may be reconveyed at the request of the beneficiary.

6. Covenant No. 6. That if default be made in the performance of the obligation, or in the payment of the debt, or interest thereon, or any part thereof, or in the payment of any of the other moneys agreed to be paid, or of any interest thereon, or if any of the conditions or covenants in this section adopted by reference be violated, and if the notice of breach and election to sell, required by this chapter, be first recorded, then trustee, its successors or assigns, on demand by beneficiary, or assigns, shall sell the above-granted premises, or such part thereof as in its discretion it shall find necessary to sell, in order to accomplish the objects of these trusts, in the manner following, namely:

The trustees shall first give notice of the time and place of such sale, in the manner provided in [NRS 107.080](#) and may postpone such sale not more than three times by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, the trustee

may sell the property so advertised, or any portion thereof, at public auction, at the time and place specified in the notice, at a public location in the county in which the property, or any part thereof, to be sold, is situated, to the highest cash bidder. The beneficiary, obligee, creditor, or the holder or holders of the promissory note or notes secured thereby may bid and purchase at such sale. The beneficiary may, after recording the notice of breach and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to the beneficiary's former position and have and enjoy the same rights as though such notice had not been recorded.

7. Covenant No. 7. That the trustee, upon such sale, shall make (without warranty), execute and, after due payment made, deliver to purchaser or purchasers, his, her or their heirs or assigns, a deed or deeds of the premises so sold which shall convey to the purchaser all the title of the grantor in the trust premises, and shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of the trust, including counsel fees, in an amount equal to percent of the amount secured thereby and remaining unpaid, which shall become due upon any default made by grantor in any of the payments aforesaid; and also such sums, if any, as trustee or beneficiary shall have paid, for procuring a search of the title to the premises, or any part thereof, subsequent to the execution of the deed of trust; and in payment, secondly, of the obligation or debts secured, and interest thereon then remaining unpaid, and the amount of all other moneys with interest thereon herein agreed or provided to be paid by grantor; and the balance or surplus of such proceeds of sale it shall pay to grantor, his or her heirs, executors, administrators or assigns.

8. Covenant No. 8. That in the event of a sale of the premises conveyed or transferred in trust, or any part thereof, and the execution of a deed or deeds therefor under such trust, the recital therein of default, and of recording notice of breach and election of sale, and of the elapsing of the 3-month period, and of the giving of notice of sale, and of a demand by beneficiary, his or her heirs or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by beneficiary, his or her heirs and assigns; and any such deed or deeds with such recitals therein shall be effectual and conclusive against grantor, his or her heirs and assigns, and all other persons; and the receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid.

9. Covenant No. 9. That the beneficiary or his or her assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust or other conveyance in trust. A copy of a resolution of the board of directors of beneficiary (if beneficiary be a corporation), certified by the secretary thereof, under its corporate seal, or an instrument executed and acknowledged by the beneficiary (if the beneficiary be a natural person), shall be conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such certified copy or executed and acknowledged instrument, the new trustee or trustees shall be vested with all the title, interest, powers, duties and trusts in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the beneficiary, and all of the trustee's acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

N.R.S. 107.040

107.040. Adoption of covenants by reference in instrument

1. In order to adopt by reference any of the covenants, agreements, obligations, rights and remedies in [NRS 107.030](#), it shall only be necessary to state in the deed of trust the following: “The following covenants, Nos., and (inserting the respective numbers) of [NRS 107.030](#) are hereby adopted and made a part of this deed of trust.”
2. A deed of trust or other conveyance in trust, in order to fix the amount of insurance to be carried, need not reincorporate the provisions of Covenant No. 2 of [NRS 107.030](#), but may merely state the following: “Covenant No. 2,” and set out thereafter the amount of insurance to be carried.
3. In order to fix the rate of interest under Covenant No. 4 of [NRS 107.030](#), it shall only be necessary to state in such trust deed or other conveyance in trust, “Covenant No. 4,” and set out thereafter the rate of interest to be charged thereunder.
4. In order to fix the amount or percent of counsel fees under Covenant No. 7 of [NRS 107.030](#), it shall only be necessary to state in such deed of trust, or other conveyance in trust, the following: “Covenant No. 7,” and set out thereafter the percentage to be allowed.

N.R.S. 107.050

107.050. Parties may enter into different or additional covenants

Nothing in [NRS 107.030](#) and [107.040](#) shall prevent the parties to any transfer in trust from entering into other, different or additional covenants or agreements than those set out in [NRS 107.030](#).

N.R.S. 107.055

107.055. Amount must be stated in instrument

If a party to a deed of trust, executed after July 1, 1971, desires to charge an assumption fee for a change in parties, the amount of such charge must be clearly set forth in the deed of trust at the time of execution.

N.R.S. 107.070

107.070. Recording of assignments of beneficial interests and instruments subordinating or waiving priority of deeds of trust

The provisions of [NRS 106.210](#) and [106.220](#) apply to deeds of trust as therein specified.

N.R.S. 107.073

107.073. Marginal entries; reconveyance must be recorded if deed of trust recorded by photographic process; presentation of certificate executed by trustee or trustee’s personal representative or assignee

1. Except as otherwise provided in subsection 2, a recorded deed of trust may be discharged by an entry on the margin of the record thereof, signed by the trustee or the trustee’s personal representative or assignee in the presence of the recorder or the recorder’s deputy, acknowledging the satisfaction of or value received for the deed of trust and the debt secured thereby. The recorder or the recorder’s deputy shall subscribe the entry as witness. The entry has the same effect as a reconveyance of the deed of trust acknowledged and recorded as provided by law. The recorder shall properly index each marginal discharge.

2. If the deed of trust has been recorded by a microfilm or other photographic process, a marginal release may not be used and an acknowledged reconveyance of the deed of trust must be recorded.

3. If the recorder or the recorder's deputy is presented with a certificate executed by the trustee or the trustee's personal representative or assignee, specifying that the deed of trust has been paid or otherwise satisfied or discharged, the recorder or the recorder's deputy shall discharge the deed of trust upon the record.

N.R.S. 107.077

107.077. Delivery of documents by beneficiary to trustee; recording by trustee; liability for failure to deliver or record documents; requirements for release of deed of trust when reconveyance not recorded; liability for improperly recording deed of trust; criminal penalty

1. Within 21 calendar days after receiving written notice that a debt secured by a deed of trust made on or after October 1, 1991, has been paid or otherwise satisfied or discharged, the beneficiary shall deliver to the trustee or the trustor the original note and deed of trust, if the beneficiary is in possession of those documents, and a properly executed request to reconvey the estate in real property conveyed to the trustee by the grantor. If the beneficiary delivers the original note and deed of trust to the trustee or the trustee has those documents in his or her possession, the trustee shall deliver those documents to the grantor.

2. Within 45 calendar days after a debt secured by a deed of trust made on or after October 1, 1991, is paid or otherwise satisfied or discharged, and a properly executed request to reconvey is received by the trustee, the trustee shall cause to be recorded a reconveyance of the deed of trust.

3. If the beneficiary fails to deliver to the trustee a properly executed request to reconvey pursuant to subsection 1, or if the trustee fails to cause to be recorded a reconveyance of the deed of trust pursuant to subsection 2, the beneficiary or the trustee, as the case may be, is liable in a civil action to the grantor, his or her heirs or assigns in the sum of \$1,000, plus reasonable attorney's fees and the costs of bringing the action, and the beneficiary or the trustee is liable in a civil action to any party to the deed of trust for any actual damages caused by the failure to comply with the provisions of this section and for reasonable attorney's fees and the costs of bringing the action.

4. Except as otherwise provided in this subsection, if a reconveyance is not recorded pursuant to subsection 2 within:

(a) Seventy-five calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made on or after October 1, 1993; or

(b) Ninety calendar days after the payment, satisfaction or discharge of the debt, if the payment, satisfaction or discharge was made before October 1, 1993,

a title insurer may prepare and cause to be recorded a release of the deed of trust. At least 30 calendar days before the recording of a release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the release of the deed of trust to the trustee, trustor and beneficiary of record, or their successors in interest, at the last known address of each such person. A release prepared and recorded pursuant to this subsection shall be deemed a reconveyance of a deed of trust. The title insurer shall not cause a release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the trustee, the trustor, the owner of the land, the holder of the escrow or the owner of the debt secured by the deed of trust or his or her agent.

5. The release prepared pursuant to subsection 4 must set forth:
 - (a) The name of the beneficiary;
 - (b) The name of the trustor;
 - (c) The recording reference to the deed of trust;
 - (d) A statement that the debt secured by the deed of trust has been paid in full or otherwise satisfied or discharged;
 - (e) The date and amount of payment or other satisfaction or discharge; and
 - (f) The name and address of the title insurer issuing the release.
6. A release prepared and recorded pursuant to subsection 4 does not relieve a beneficiary or trustee of the requirements imposed by subsections 1 and 2.
7. A trustee may charge a reasonable fee to the trustor or the owner of the land for services relating to the preparation, execution or recordation of a reconveyance or release pursuant to this section. A trustee shall not require the fees to be paid before the opening of an escrow, or earlier than 60 calendar days before the payment, satisfaction or discharge of the debt secured by the deed of trust. If a fee charged pursuant to this subsection does not exceed \$100, the fee is conclusively presumed to be reasonable.
8. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a release of a deed of trust pursuant to this section is liable for actual damages and for a reasonable attorney's fee and the costs of bringing the action to any person who is injured because of the improper recordation of the release.
9. Any person who willfully violates this section is guilty of a misdemeanor.

N.R.S. 107.078

107.078. Partial discharge: Delivery of documents by beneficiary to trustee; recording by trustee; liability for failure to deliver or record documents; requirements for partial release of deed of trust when reconveyance not recorded; criminal penalty

1. If a deed of trust made on or after October 1, 1995, authorizes the grantor to discharge in part the debt secured by the deed of trust and the deed of trust authorizes a partial reconveyance of the estate in real property in consideration of a partial discharge, the beneficiary shall, within 21 calendar days after receiving notice that the debt secured by the deed of trust has been partially discharged, deliver to the trustee a properly executed request for a partial reconveyance of the estate in real property conveyed to the trustee by the grantor.
2. Within 45 calendar days after a debt secured by a deed of trust made on or after October 1, 1995, is partially discharged and a properly executed request for a partial reconveyance is received by the trustee, the trustee shall cause to be recorded a partial reconveyance of the deed of trust.
3. If the beneficiary fails to deliver to the trustee a properly executed request for a partial reconveyance pursuant to subsection 1, or if the trustee fails to cause to be recorded a partial reconveyance of the deed of trust pursuant to subsection 2, the beneficiary or the trustee, as the case may be, is liable in a civil action to the grantor, the grantor's heirs or assigns in the amount of \$1,000, plus reasonable attorney's fees and the costs of bringing the action, and the beneficiary or trustee is liable in a civil action to any party to the deed of trust for any actual damages caused by the failure to comply with the provisions of this section and for reasonable attorney's fees and the costs of bringing the action.
4. Except as otherwise provided in this subsection, if a partial reconveyance is not recorded pursuant to subsection 2 within 75 calendar days after the partial satisfaction of the debt and if

the satisfaction was made on or after October 1, 1995, a title insurer may prepare and cause to be recorded a partial release of the deed of trust. At least 30 calendar days before the recording of a partial release pursuant to this subsection, the title insurer shall mail, by first-class mail, postage prepaid, notice of the intention to record the partial release of the deed of trust to the trustee, trustor and beneficiary of record, or their successors in interest, at the last known address of each such person. A partial release prepared and recorded pursuant to this subsection shall be deemed a partial reconveyance of a deed of trust. The title insurer shall not cause a partial release to be recorded pursuant to this subsection if the title insurer receives written instructions to the contrary from the trustee, trustor, owner of the land, holder of the escrow or owner of the debt secured by the deed of trust or his or her agent.

5. The release prepared pursuant to subsection 4 must set forth:

- (a) The name of the beneficiary;
- (b) The name of the trustor;
- (c) The recording reference to the deed of trust;
- (d) A statement that the debt secured by the deed of trust has been partially discharged;
- (e) The date and amount of partial payment or other partial satisfaction or discharge;
- (f) The name and address of the title insurer issuing the partial release; and
- (g) The legal description of the estate in real property which is reconveyed.

6. A partial release prepared and recorded pursuant to subsection 4 does not relieve a beneficiary or trustee of the requirements imposed by subsections 1 and 2.

7. A trustee may charge a reasonable fee to the trustor or the owner of the land for services relating to the preparation, execution or recordation of a partial reconveyance or partial release pursuant to this section. A trustee shall not require the fees to be paid before the opening of an escrow or earlier than 60 calendar days before the partial payment or partial satisfaction or discharge of the debt secured by the deed of trust. If a fee charged pursuant to this subsection does not exceed \$100, the fee is conclusively presumed to be reasonable.

8. In addition to any other remedy provided by law, a title insurer who improperly causes to be recorded a partial release of a deed of trust pursuant to this section is liable for actual damages and for a reasonable attorney's fee and the costs of bringing the action to any person who is injured because of the improper recordation of the partial release.

9. Any person who willfully violates this section is guilty of a misdemeanor.

N.R.S. 107.080

107.080. Trustee's power of sale: Power conferred; required notices; contents of notarized affidavits; effect of sale; circumstances in which sale must be declared void; civil actions for noncompliance with certain requirements; duty to record; fees

<Section effective until June 30, 2013, when it expires by limitation. See, also, section effective July 1, 2013.>

1. Except as otherwise provided in [NRS 106.210](#), [107.085](#) and [107.086](#), if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

- (a) Except as otherwise provided in paragraph (b), in the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment.

(b) In the case of any trust agreement which concerns owner-occupied housing as defined in [NRS 107.086](#), the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period that commences in the manner and subject to the requirements described in subsection 3 and expires 5 days before the date of sale, failed to make good the deficiency in performance or payment.

(c) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property to satisfy the obligation which, except as otherwise provided in this paragraph, includes a notarized affidavit of authority to exercise the power of sale stating, based on personal knowledge and under the penalty of perjury:

(1) The full name and business address of the trustee or the trustee's personal representative or assignee, the current holder of the note secured by the deed of trust, the current beneficiary of record and the servicers of the obligation or debt secured by the deed of trust;

(2) The full name and last known business address of every prior known beneficiary of the deed of trust;

(3) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust;

(4) That the trustee has the authority to exercise the power of sale with respect to the property pursuant to the instruction of the beneficiary of record and the current holder of the note secured by the deed of trust;

(5) The amount in default, the principal amount of the obligation or debt secured by the deed of trust, a good faith estimate of all fees imposed and to be imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale; and

(6) The date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

The affidavit described in this paragraph is not required for the exercise of the trustee's power of sale with respect to any trust agreement which concerns a time share within a time share plan created pursuant to chapter 119A of NRS if the power of sale is being exercised for the initial beneficiary under the deed of trust or an affiliate of the initial beneficiary.

(d) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2, or the period provided in paragraph (b) of subsection 2, commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor

or, to the person who holds the title of record on the date the notice of default and election to sell is recorded, and, if the property is operated as a facility licensed under chapter 449 of NRS, to the State Board of Health, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must:

(a) Describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2; and

(b) If the property is a residential foreclosure, comply with the provisions of [NRS 107.087](#).

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor, any other person entitled to notice pursuant to this section and, if the property is operated as a facility licensed under chapter 449 of NRS, the State Board of Health, by personal service or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in a public place in the county where the property is situated;

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated or, if the property is a time share, by posting a copy of the notice on an Internet website and publishing a statement in a newspaper in the manner required by subsection 3 of [NRS 119A.560](#); and

(d) If the property is a residential foreclosure, complying with the provisions of [NRS 107.087](#).

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. A sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of [NRS 107.086](#) and [107.087](#);

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

7. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any

requirement of subsection 2, 3 or 4, the court must award to the grantor or the person who holds title of record:

- (a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;
- (b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and
- (c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

8. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

9. After a sale of property is conducted pursuant to this section, the trustee shall:

- (a) Within 30 days after the date of the sale, record the trustee's deed upon sale in the office of the county recorder of the county in which the property is located; or
- (b) Within 20 days after the date of the sale, deliver the trustee's deed upon sale to the successful bidder. Within 10 days after the date of delivery of the deed by the trustee, the successful bidder shall record the trustee's deed upon sale in the office of the county recorder of the county in which the property is located.

10. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection 9, the successful bidder:

- (a) Is liable in a civil action to any party that is a senior lienholder against the property that is the subject of the sale in a sum of up to \$500 and for reasonable attorney's fees and the costs of bringing the action; and
- (b) Is liable in a civil action for any actual damages caused by the failure to comply with the provisions of subsection 9 and for reasonable attorney's fees and the costs of bringing the action.

11. The county recorder shall, in addition to any other fee, at the time of recording a notice of default and election to sell collect:

- (a) A fee of \$150 for deposit in the State General Fund.
- (b) A fee of \$45 for deposit in the Account for Foreclosure Mediation, which is hereby created in the State General Fund. The Account must be administered by the Court Administrator, and the money in the Account may be expended for the purpose of supporting a program of foreclosure mediation established by Supreme Court Rule or for any other purpose authorized by the Legislature.
- (c) A fee of \$5 to be paid over to the county treasurer on or before the fifth day of each month for the preceding calendar month. The county recorder may direct that 1.5 percent of the fees collected by the county recorder pursuant to this paragraph be transferred into a special account for use by the office of the county recorder. The county treasurer shall remit quarterly to the organization operating the program for legal services that receives the fees charged pursuant to [NRS 19.031](#) for the operation of programs for the indigent all the money received from the county recorder pursuant to this paragraph.

12. The fees collected pursuant to paragraphs (a) and (b) of subsection 11 must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and, except as otherwise provided in this subsection, must be placed to the credit of the State General Fund or the Account for Foreclosure Mediation as prescribed pursuant to subsection 11. The county recorder may direct that 1.5 percent of the fees collected by the county recorder be transferred into a special account for use by the office of the county

recorder. The county treasurer shall, on or before the 15th day of each month, remit the fees deposited by the county recorder pursuant to this subsection to the State Controller for credit to the State General Fund or the Account as prescribed in subsection 11.

13. The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection 11.

14. As used in this section:

(a) "Residential foreclosure" means the sale of a single family residence under a power of sale granted by this section. As used in this paragraph, "single family residence":

(1) Means a structure that is comprised of not more than four units.

(2) Does not include vacant land or any time share or other property regulated under chapter 119A of NRS.

(b) "Trustee" means the trustee of record.

N.R.S. 107.081

107.081. Time and place of sale; agent holding sale not to be purchaser

1. All sales of property pursuant to [NRS 107.080](#) must be made at auction to the highest bidder and must be made between the hours of 9 a.m. and 5 p.m. The agent holding the sale must not become a purchaser at the sale or be interested in any purchase at such a sale.

2. All sales of real property must be made:

(a) In a county with a population of less than 100,000, at the courthouse in the county in which the property or some part thereof is situated.

(b) In a county with a population of 100,000 or more, at the public location in the county designated by the governing body of the county for that purpose.

N.R.S. 107.082

107.082. Oral postponement of sale

1. If a sale of property pursuant to [NRS 107.080](#) is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location.

2. If such a sale has been postponed by oral proclamation three times, any new sale information must be provided by notice as provided in [NRS 107.080](#).

N.R.S. 107.083

107.083. Proceedings after purchaser refuses to pay amount bid

1. If a purchaser refuses to pay the amount the purchaser bid for the property struck off at a sale pursuant to [NRS 107.080](#), the agent may again sell the property to the highest bidder, after again giving the notice previously provided.

2. If any loss is incurred from the purchaser refusing to pay the amount of the bid, the agent may recover the amount of the loss, with costs, for the benefit of the party aggrieved, by motion upon previous notice of 5 days to the purchaser, before any court of competent jurisdiction.

3. The court shall proceed in a summary manner in the hearing and disposition of such a motion, and give judgment and issue execution therefor forthwith, but the refusing purchaser may request a jury. The same proceedings may be had against any subsequent purchaser who refuses to pay, and the agent may, in the agent's discretion, thereafter reject the bid of any person so refusing.

4. An agent is not liable for any amount other than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser who refused to pay.

N.R.S. 107.084

107.084. Penalty for removing or defacing notice of sale

It is unlawful for a person to willfully remove or deface a notice posted pursuant to subsection 4 of [NRS 107.080](#), if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default. In addition to any other penalty, any person who violates this section is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.

N.R.S. 107.085

107.085. Restrictions on trustee's power of sale concerning certain trust agreements: Applicability; service of notice; scheduling of date of sale; form of notice; judicial foreclosure not prohibited; "unfair lending practice" defined

1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to [NRS 107.080](#) only if:

(a) The trust agreement becomes effective on or after October 1, 2003, and, on the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, [15 U.S.C. § 1602 \(bb\)](#), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, [12 C.F.R. § 226.32](#); or

(b) The trust agreement concerns owner-occupied housing as defined in [NRS 107.086](#).

2. The trustee shall not exercise a power of sale pursuant to [NRS 107.080](#) unless:

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor or the person who holds the title of record a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor or the person who holds the title of record:

(1) Except as otherwise provided in subparagraph (2), by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor or the person who holds the title of record; or

(2) If the trust agreement concerns owner-occupied housing as defined in [NRS 107.086](#):

(I) By personal service;

(II) If the grantor or the person who holds the title of record is absent from his or her place of residence or from his or her usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the grantor or the person who holds the title of record at his or her place of residence or place of business; or

(III) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the trust property, delivering a copy to a person there residing if the person can be found and mailing a copy to the grantor or the person who holds the title of record at the place where the trust property is situated; and

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and, except as otherwise provided in subsection 4, a copy of the promissory note attached to the notice:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME!

YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST MEDIATION HAS NOT EXPIRED!

Your home loan is being foreclosed. In not less than 60 days your home may be sold and you may be forced to move. For help, call:

State of Nevada Foreclosure Mediation Program

Consumer Credit Counseling

The Attorney General

The Division of Mortgage Lending

The Division of Financial Institutions

Legal Services

Your Lender

Nevada Fair Housing Center.....

4. The trustee shall cause all social security numbers to be redacted from the copy of the promissory note before it is attached to the notice pursuant to paragraph (b) of subsection 3.

5. This section does not prohibit a judicial foreclosure.

6. As used in this section, “unfair lending practice” means an unfair lending practice described in [NRS 598D.010](#) to [598D.150](#), inclusive.

N.R.S. 107.086

107.086. Additional requirements for sale of owner-occupied housing: Notice; form; election of mediation; adoption of rules concerning mediation; applicability

1. In addition to the requirements of [NRS 107.085](#), the exercise of the power of sale pursuant to [NRS 107.080](#) with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section.

2. The trustee shall not exercise a power of sale pursuant to [NRS 107.080](#) unless the trustee:

(a) Includes with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of [NRS 107.080](#):

(1) Contact information which the grantor or the person who holds the title of record may use to reach a person with authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust;

(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record has the right to seek mediation pursuant to this section; and

(4) A form upon which the grantor or the person who holds the title of record may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;

(b) Serves a copy of the notice upon the Mediation Administrator; and

(c) Causes to be recorded in the office of the recorder of the county in which the trust property, or some part thereof, is situated:

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 3 or 6 which provides that no mediation is required in the matter; or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 7 which provides that mediation has been completed in the matter.

3. The grantor or the person who holds the title of record shall, not later than 30 days after service of the notice in the manner required by [NRS 107.080](#), complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee by certified mail, return receipt requested. If the grantor or the person who holds the title of record indicates on the form an election to enter into mediation, the trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in [NRS 107.090](#), by certified mail, return receipt requested, of the election of the grantor or the person who holds the title of record to enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. No further action may be taken to exercise the power of sale until the completion of the mediation. If the grantor or the person who holds the title of record indicates on the form an election to waive mediation or fails to return the form to the trustee as required by this subsection, the trustee shall execute an affidavit attesting to that fact under penalty of perjury and serve a copy of the affidavit, together with the waiver of mediation by the grantor or the person who holds the title of record, or proof of service on the grantor or the person who holds the title of record of the notice required by subsection 2 of this section and subsection 3 of [NRS 107.080](#), upon the Mediation Administrator. Upon receipt of the affidavit and the waiver or proof of service, the Mediation Administrator shall provide to the trustee a certificate which provides that no mediation is required in the matter.

4. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 8. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or a representative shall attend the mediation if the grantor elected to enter into mediation, or the person who holds the title of record or a representative shall attend the mediation if the person who holds the title of record elected to enter into mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

5. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 4 or does not have the authority or access to a person with the authority required by subsection 4, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

6. If the grantor or the person who holds the title of record elected to enter into mediation and fails to attend the mediation, the Mediation Administrator shall provide to the trustee a certificate which states that no mediation is required in the matter.

7. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

8. The Supreme Court shall adopt rules necessary to carry out the provisions of this section. The rules must, without limitation, include provisions:

(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity.

(b) Ensuring that mediations occur in an orderly and timely manner.

(c) Requiring each party to a mediation to provide such information as the mediator determines necessary.

(d) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.

(e) Establishing a total fee of not more than \$400 that may be charged and collected by the Mediation Administrator for mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.

9. Except as otherwise provided in subsection 11, the provisions of this section do not apply if:

(a) The grantor or the person who holds the title of record has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or

(b) A petition in bankruptcy has been filed with respect to the grantor or the person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

10. A noncommercial lender is not excluded from the application of this section.

11. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

12. As used in this section:

(a) "Mediation Administrator" means the entity so designated pursuant to subsection 8.

(b) "Noncommercial lender" means a lender which makes a loan secured by a deed of trust on owner-occupied housing and which is not a bank, financial institution or other entity regulated pursuant to title 55 or 56 of NRS.

(c) "Owner-occupied housing" means housing that is occupied by an owner as the owner's primary residence. The term does not include vacant land or any time share or other property regulated under chapter 119A of NRS.

N.R.S. 107.087

107.087. Notice of default and sale in residential foreclosure: Requirements

1. In addition to the requirements of [NRS 107.080](#), if the sale of property is a residential foreclosure, a copy of the notice of default and election to sell and the notice of sale must:

(a) Be posted in a conspicuous place on the property not later than:

(1) For a notice of default and election to sell , 100 days before the date of sale; or

(2) For a notice of sale, 15 days before the date of sale; and

(b) Include, without limitation:

(1) The physical address of the property; and

(2) The contact information of the trustee or the person conducting the foreclosure who is authorized to provide information relating to the foreclosure status of the property.

2. In addition to the requirements of [NRS 107.084](#), the notices must not be defaced or removed until the transfer of title is recorded or the property becomes occupied after completion of the sale, whichever is earlier.

3. A separate notice must be posted in a conspicuous place on the property and mailed, with a certificate of mailing issued by the United States Postal Service or another mail delivery service, to any tenant or subtenant, if any, other than the grantor or the grantor's successor in interest, in actual occupation of the premises not later than 3 business days after the notice of the sale is given pursuant to subsection 4 of [NRS 107.080](#). The separate notice must be in substantially the following form:

NOTICE TO TENANTS OF THE PROPERTY

Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.

You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.

Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.

After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.

Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to quit.

If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

Under [Nevada Revised Statutes 40.280](#), notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:

(1) Delivering a copy to you personally in the presence of a witness;

(2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or

(3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is.

If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the

opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to [Nevada Revised Statutes 40.360](#) or some combination of those results.

Under the Justice Court Rules of Civil Procedure:

- (1) You will be given at least 10 days to answer a summons and complaint;
 - (2) If you do not file an answer, an order evicting you by default may be obtained against you;
 - (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and
 - (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.
4. The posting of a notice required by this section must be completed by a process server licensed pursuant to chapter 648 of NRS or any constable or sheriff.
5. As used in this section, “residential foreclosure” has the meaning ascribed to it in [NRS 107.080](#).

N.R.S. 107.090

107.090. Request for notice of default and sale: Recording and contents; mailing of notice; request by homeowners’ association; effect of request

1. As used in this section, “person with an interest” means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.
2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.
3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to [NRS 107.080](#), cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:
 - (a) Each person who has recorded a request for a copy of the notice; and
 - (b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.
4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.
5. An association may record in the office of the county recorder of the county in which a unit governed by the association is situated an acknowledged request for a copy of the deed upon sale of the unit pursuant to a deed of trust. A request recorded by an association must include, without limitation:
 - (a) A legal description of the unit or the assessor's parcel number of the unit;

- (b) The name and address of the association; and
 - (c) A statement that the request is made by an association.
6. A request recorded by an association pursuant to subsection 5 regarding a unit supersedes all previous requests recorded by the association pursuant to subsection 5 regarding the unit.
7. If a trustee or person authorized to record a notice of default records the notice of default for a unit regarding which an association has recorded a request pursuant to subsection 5, the trustee or authorized person shall mail to the association a copy of the deed upon the sale of the unit pursuant to a deed of trust within 15 days after the trustee records the deed upon the sale of the unit.
8. No request recorded pursuant to the provisions of subsection 2 or 5 affects the title to real property, and failure to mail a copy of the deed upon the sale of the unit after a request is made by an association pursuant to subsection 5 does not affect the title to real property.
9. As used in this section:
- (a) “Association” has the meaning ascribed to it in [NRS 116.011](#).
 - (b) “Unit” has the meaning ascribed to it in [NRS 116.093](#).

N.R.S. 107.095

107.095. Notice of default: Mailing to guarantor or surety of debt; effect of failure to give

1. The notice of default required by [NRS 107.080](#) must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his or her obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to [NRS 107.080](#) or the obligation of any guarantor or surety to whom the notice was properly given.
2. Failure to give the notice of default required by [NRS 107.090](#), except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with [NRS 107.090](#) and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to [NRS 107.080](#) or the obligation of any person to whom the notice was properly given pursuant to this section or to [NRS 107.080](#) or [107.090](#).
3. A guarantor, surety or other obligor is not released pursuant to this section if:
- (a) The required notice is given at least 15 days before the later of:
 - (1) The expiration of the 15- or 35-day period described in paragraph (a) of subsection 2 of [NRS 107.080](#);
 - (2) In the case of any trust agreement which concerns owner-occupied housing as defined in [NRS 107.086](#), the expiration of the period described in paragraph (b) of subsection 2 of [NRS 107.080](#); or
 - (3) Any extension of the applicable period by the beneficiary; or
 - (b) The notice is rescinded before the sale is advertised.

N.R.S. 107.100

107.100. Receiver: Appointment after filing notice of breach and election to sell

1. At any time after the filing of a notice of breach and election to sell real property under a power of sale contained in a deed of trust, the trustee or beneficiary of the deed of trust may

apply to the district court for the county in which the property or any part of the property is located for the appointment of a receiver of such property.

2. A receiver shall be appointed where it appears that personal property subject to the deed of trust is in danger of being lost, removed, materially injured or destroyed, that real property subject to the deed of trust is in danger of substantial waste or that the income therefrom is in danger of being lost, or that the property is or may become insufficient to discharge the debt which it secures.

N.R.S. 107.110

107.110. Maintenance of residential property purchased at trustee's sale

1. Any vacant residential property purchased or acquired by a person at a trustee's sale pursuant to [NRS 107.080](#) must be maintained by that person in accordance with subsection 2.

2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:

(a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;

(b) Preventing trespassers from remaining on the property;

(c) Preventing mosquito larvae from growing in standing water; and

(d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

(a) Describing the violation;

(b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and

(c) Informing the person that he or she may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.

5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:

(a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.
9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.
10. As used in this section, “applicable governmental entity” means:
 - (a) If the property is within the boundaries of a city, the governing body of the city; and
 - (b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

N.R.S. 107.200

107.200. Contents of statement regarding debt secured by deed of trust

Except as otherwise provided in [NRS 107.230](#), the beneficiary of a deed of trust secured on or after October 1, 1995, shall, within 21 days after receiving a request from a person authorized to make such a request pursuant to [NRS 107.220](#), cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement regarding the debt secured by the deed of trust. The statement must include:

1. The amount of the unpaid balance of the debt secured by the deed of trust, the rate of interest on the unpaid balance and the total amount of principal and interest which is due and has not been paid.
2. The amount of the periodic payments, if any, required under the note.
3. The date the payment of the debt is due.
4. The period for which real estate taxes and special assessments have been paid, if that information is known to the beneficiary.
5. The amount of property insurance covering the real property and the term and premium of that insurance, if that information is known to the beneficiary.
6. The amount in an account, if any, maintained for the accumulation of money for the payment of taxes and insurance premiums.
7. The amount of any additional charges, costs or expenses paid or incurred by the beneficiary which is a lien on the real property described in the deed of trust.
8. Whether the debt secured by the deed of trust may be transferred to a person other than the grantor.

N.R.S. 107.210

107.210. Contents of statement of amount necessary to discharge debt secured by deed of trust

Except as otherwise provided in [NRS 107.230](#) and [107.240](#), the beneficiary of a deed of trust secured on or after October 1, 1995, shall, within 21 days after receiving a request from a person authorized to make such a request pursuant to [NRS 107.220](#), cause to be mailed, postage prepaid, or sent by facsimile machine to that person a statement of the amount necessary to discharge the debt secured by the deed of trust. The statement must set forth:

1. The identity of the trustee or the trustee's personal representative or assignee, the current holder of the note secured by the deed of trust, the beneficiary of record and the servicers of the obligation or debt secured by the deed of trust;
2. The amount of money necessary to discharge the debt secured by the deed of trust on the date the statement is prepared by the beneficiary;

3. The information necessary to determine the amount of money required to discharge the debt on a per diem basis for a period, not to exceed 30 days, after the statement is prepared by the beneficiary; and
4. If the debt is in default, the amount in default, the principal amount of the obligation or debt secured by the deed of trust, the interest accrued and unpaid on the obligation or debt secured by the deed of trust, all fees imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale.

N.R.S. 107.220

107.220. Persons authorized to request statement from beneficiary; proof of identity of successor in interest

1. A statement described in [NRS 107.200](#) or [107.210](#) may be requested by:

- (a) The grantor of, or a successor in interest in, the property which is the subject of the deed of trust;
- (b) A person who has a subordinate lien or encumbrance of record on the property which is secured by the deed of trust;
- (c) A title insurer; or
- (d) An authorized agent of any person described in paragraph (a), (b) or (c).

A written statement signed by any person described in paragraph (a), (b) or (c) which appoints a person to serve as agent if delivered personally to the beneficiary or delivered by mail, return receipt requested, is proof of the identity of an agent.

2. For the purposes of paragraph (a) of subsection 1, a policy of title insurance, preliminary report issued by a title company, certified copy of letters testamentary or letters of guardianship, or an original or photographic copy of a deed, if delivered personally to the beneficiary or delivered by mail, return receipt requested, is proof of the identity of a successor in interest of the grantor, if the person demanding the statement is named as successor in interest in the document.

N.R.S. 107.230

107.230. Proof of authorization to request statement

A beneficiary may, before mailing a statement described in [NRS 107.200](#) or [107.210](#), require the person who requested the statement to prove that the person is authorized to request that statement pursuant to [NRS 107.220](#). If the beneficiary requires such proof, the beneficiary must mail the statement within 21 days after receiving proof from the requester.

N.R.S. 107.240

107.240. Grounds for refusal to deliver statement

If the debt secured by a deed of trust for which a statement described in [NRS 107.210](#) has been requested is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the beneficiary may refuse to deliver the statement unless the written request for the statement is received before the publication of a notice of sale or the notice of the date of sale established by a court.

N.R.S. 107.250

107.250. Reliance upon accuracy of statement and amended statement; notification of amended statement; recovery of money by beneficiary if statement is deficient

1. A person who receives a statement pursuant to [NRS 107.200](#) or [107.210](#) may rely upon the accuracy of the information contained in the statement. If the beneficiary notifies the person who requested the statement of any amendment to the statement, the amended statement may be relied upon by that person in the same manner as the original statement.
2. If notification of an amendment to a statement is not given in writing, a written amendment to the statement must be delivered to the person who requested the original statement not later than the next business day after notification.
3. If a statement prepared by the beneficiary pursuant to [NRS 107.200](#) does not contain the entire amount necessary to discharge the debt secured by the deed of trust and:
 - (a) A transaction has occurred which has resulted in the transfer of title or recordation of a lien; or
 - (b) A trustee's sale or a sale supervised by a court has taken place,the beneficiary may recover that money as an unsecured debt of the grantor pursuant to the terms of the note.

N.R.S. 107.260

107.260. Copy of note or deed of trust for authorized requester

If a person who is authorized pursuant to [NRS 107.220](#) to request a statement described in [NRS 107.200](#) or [107.210](#) includes in the request for such a statement a request for a copy of the note or deed of trust, the beneficiary shall mail a copy of the note or deed of trust with the statement at no additional charge.

N.R.S. 107.270

107.270. Address to which request for statement must be mailed

If the beneficiary has more than one place of business, a request for a statement described in [NRS 107.200](#) or [107.210](#) must be made to the address to which the periodic payments under the note are made. If no periodic payments are made under the note, the request must be mailed to the address of the beneficiary listed on the note or deed of trust.

N.R.S. 107.280

107.280. Debt to which information contained in statement is applicable

Except as otherwise provided in a statement described in [NRS 107.200](#) or [107.210](#), the information contained in the statement applies only to the debt secured by the deed of trust which is payable at the address to which the periodic payments are made. If periodic payments are not made under the note, the statement applies only to the entire debt secured by the deed of trust.

N.R.S. 107.290

107.290. Unclear request for statement deemed to be request for amount necessary to discharge debt

If a person requests a statement described in [NRS 107.200](#) or [107.210](#) and it is not clear from the request which statement is requested, the request shall be deemed a request for a statement of the amount necessary to discharge the debt secured by a deed of trust.

N.R.S. 107.300

107.300. Penalty for failure to deliver statement; bar to recovery of certain damages

1. A beneficiary who willfully fails to deliver a statement requested pursuant to [NRS 107.200](#) or [107.210](#) within 21 days after it is requested is liable to the person who requested the statement in an amount of \$300 and any actual damages suffered by the person who requested the statement.
2. A judgment awarded to a person who requested a statement pursuant to [NRS 107.200](#) or [107.210](#) for failure to deliver a statement bars recovery of damages for any other failure to deliver that statement pursuant to a demand made within 6 months before or after the demand for which the judgment was awarded.
3. As used in this section, “willfully” means an intentional failure to comply with the requirements of [NRS 107.200](#) or [107.210](#) without just cause.

N.R.S. 107.310

107.310. Fee for furnishing statement

The beneficiary may charge a fee of not more than \$60 for each statement furnished pursuant to [NRS 107.200](#) or [107.210](#).

N.R.S. 107.311

107.311. Applicability of NRS 107.310

The provisions of [NRS 107.310](#) do not apply to deeds of trust insured by the Federal Housing Administrator or guaranteed by the Secretary of Veterans Affairs.

N.R.S. 107A.010

107A.010. Short title

This chapter may be cited as the Uniform Assignment of Rents Act.

N.R.S. 107A.020

107A.020. Definitions

As used in this chapter, unless the context otherwise requires, the words and terms defined in [NRS 107A.030](#) to [107A.210](#), inclusive, have the meanings ascribed to them in those sections.

N.R.S. 107A.030

107A.030. “Assignee” defined

“Assignee” means a person entitled to enforce an assignment of rents.

N.R.S. 107A.040

107A.040. “Assignment of rents” defined

“Assignment of rents” means a transfer of an interest in rents in connection with an obligation secured by real property located in this State and from which the rents arise.

N.R.S. 107A.050

107A.050. “Assignor” defined

“Assignor” means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.

N.R.S. 107A.060

107A.060. “Cash proceeds” defined

“Cash proceeds” means proceeds that are money, checks, deposit accounts or the like.

N.R.S. 107A.070

107A.070. “Day” defined

“Day” means calendar day.

N.R.S. 107A.080

107A.080. “Deposit account” defined

“Deposit account” means a demand, time, savings, passbook or similar account maintained with a bank, savings bank, savings and loan association, credit union or trust company.

N.R.S. 107A.090

107A.090. “Document” defined

“Document” 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.

N.R.S. 107A.100

107A.100. “Notification” defined

“Notification” means a document containing information that this chapter requires a person to provide to another, signed by the person required to provide the information.

N.R.S. 107A.110

107A.110. “Person” defined

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

N.R.S. 107A.110

107A.110. “Person” defined

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

N.R.S. 107A.130

107A.130. “Purchase” defined

“Purchase” means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

N.R.S. 107A.140

107A.140. “Rents” defined

“Rents” means:

1. Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;
2. Sums payable to an assignor under a policy of rental interruption insurance covering real property;

3. Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;
4. Sums payable to terminate an agreement to possess or occupy real property of another person;
5. 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
6. 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 chapter.

N.R.S. 107A.150

107A.150. “Secured obligation” defined

“Secured obligation” means an obligation the performance of which is secured by an assignment of rents.

N.R.S. 107A.160

107A.160. “Security instrument” defined

“Security instrument” means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property.

N.R.S. 107A.170

107A.170. “Security interest” defined

“Security interest” means an interest in property that arises by agreement and secures performance of an obligation.

N.R.S. 107A.180

107A.180. “Sign” defined

“Sign” means, with present intent to authenticate or adopt a document:

1. To execute or adopt a tangible symbol; or
2. To attach to or logically associate with the document an electronic sound, symbol or process.

N.R.S. 107A.190

107A.190. “State” defined

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

N.R.S. 107A.210

107A.210. “Tenant” defined

“Tenant” means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

N.R.S. 107A.220

107A.220. Manner of giving notification

1. Except as otherwise provided in subsections 3 and 4, a person gives a notification or a copy of a notification under this chapter:

(a) By depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address as specified in subsection 2, with first-class postage or cost of delivery provided for; or

(b) If the recipient agreed to receive notification by facsimile transmission, electronic mail or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

2. The following rules determine the proper address for giving a notification under subsection 1:

(a) A person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(b) A person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(c) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

3. If a person giving a notification pursuant to this chapter and the recipient have agreed to the method for giving a notification, any notification must be given by that method.

4. If a notification is received by the recipient, it is effective even if it was not given in accordance with subsection 1 or 3.

N.R.S. 107A.230

107A.230. Security instrument creates assignment of rents; assignment of rents creates security interest

1. An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

2. An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

N.R.S. 107A.240

107A.240. Recordation; perfection of security interest in rents; priority of conflicting interests in rents

1. A document creating an assignment of rents may be submitted for recording in the office of the recorder of the county in which the real property is located in the same manner as any other document evidencing a conveyance of an interest in real property.

2. Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this State other than this chapter would preclude or defer enforcement of the security interest until the

occurrence of a subsequent event, including, without limitation, a subsequent default of the assignor, the assignee's obtaining possession of the real property or the appointment of a receiver.

3. Except as otherwise provided in subsection 4, a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

- (a) Acquires a judicial lien against the rents or the real property from which the rents arise; or
- (b) Purchases an interest in the rents or the real property from which the rents arise.

4. A perfected security interest in rents has priority over the rights of a person described in subsection 3 with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

N.R.S. 107A.250

107A.250. Enforcement of security interest in rents

1. An assignee may enforce an assignment of rents using one or more of the methods specified in [NRS 107A.260](#), [107A.270](#) and [107A.280](#) or any other method sufficient to enforce the assignment under law of this State other than this chapter.

2. From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under [NRS 107A.260](#), the receiver is entitled to collect all rents that:

- (a) Have accrued but remain unpaid on that date; and
- (b) Accrue on or after that date, as those rents accrue.

N.R.S. 107A.260

107A.260. Enforcement by appointment of receiver

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

(a) The assignor is in default and:

- (1) The assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
 - (2) It appears likely that the real property may not be sufficient to satisfy the secured obligation;
 - (3) The assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
 - (4) A subordinate assignee of rents obtains the appointment of a receiver for the real property; or
- (b) Other circumstances exist that would justify the appointment of a receiver under law of this State other than this chapter.

2. An assignee may file a petition for the appointment of a receiver in connection with an action:

- (a) To foreclose the security instrument;
- (b) For specific performance of the assignment;
- (c) Seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or
- (d) Otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

3. An assignee that files a petition under subsection 2 shall also give a copy of the petition in the manner specified in [NRS 107A.220](#) to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

4. If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.
5. From the date of its appointment, a receiver is entitled to collect rents as provided in subsection 2 of [NRS 107A.250](#). The receiver also has the authority provided in the order of appointment and law of this State other than this chapter.
6. The following rules govern priority among receivers:
 - (a) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.
 - (b) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

N.R.S. 107A.270

107A.270. Enforcement by notification to assignor

1. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under [NRS 107A.250](#). The assignee shall also give a copy of the notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.
2. If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the assignor receives a notification under subsection 1.
3. An assignee's failure to give a notification under subsection 1 to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted under law of this State other than this chapter.
4. An assignee that holds a security interest in rents solely by virtue of subsection 1 of [NRS 107A.230](#) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

N.R.S. 107A.280

107A.280. Enforcement by notification to tenant

1. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property. The notification must be signed by the assignee and:
 - (a) Identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor and assignment of rents being enforced;
 - (b) Provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;
 - (c) State that the assignee has the right to collect rents in accordance with the assignment;
 - (d) Direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;

- (e) Describe the manner in which subsections 3 and 4 affect the tenant's payment obligations;
 - (f) Provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and
 - (g) Contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.
2. If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with subsection 1.
3. Subject to subsection 4 and any other claim or defense that a tenant has under law of this State other than this chapter, following receipt of a notification substantially complying with subsection 1:
- (a) A tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee of rents given by that assignee in accordance with this section and the other assignee has not cancelled that notification;
 - (b) Unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;
 - (c) A tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and
 - (d) A tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee cancelling its notification, whichever occurs first.
4. A tenant that has received a notification under subsection 1 is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:
- (a) Ten days after the date the next regularly scheduled rental payment would be due; or
 - (b) Thirty days after the date the tenant receives the notification.
5. Upon receiving a notification from another creditor that is entitled to priority under subsection 3 of [NRS 107A.240](#) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under subsection 1 shall immediately give another notification to the tenant cancelling the earlier notification.
6. An assignee's failure to give a notification under subsection 1 to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this State other than this chapter.
7. An assignee that holds a security interest in rents solely by virtue of subsection 1 of [NRS 107A.230](#) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

N.R.S. 107A.290

107A.290. Notification to tenant: Form

No particular phrasing is required for the notification specified in [NRS 107A.280](#). However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of [NRS 107A.280](#):

NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant:

Name of Tenant

Property Occupied by Tenant (the "Premises"):

Address

Landlord:

Name of Landlord

Assignee:

Name of Assignee

Address of Assignee and Telephone Number of Contact Person:

Address of Assignee

Telephone Number of Person to Contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under _____ (name of document) (the "Assignment of Rents") dated ____ (date), and recorded at _____ (recording data) in the _____ (appropriate governmental office under [NRS 111.310 to 111.365](#), inclusive). You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.
2. The Landlord is in default under the Assignment of Rents. Under the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.
3. This notification affects your rights and obligations under the agreement under which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30 days after you receive this notification, neither the Assignee nor the Landlord can hold you in default under your Agreement for nonpayment of that rental payment until 10 days after the due date of that payment or 30 days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations under your Agreement and the effect of this notification.
4. You must pay to the Assignee at the address listed above all rents under your Agreement which are due and payable on the date you receive this notification and all rents accruing under your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.
5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your

rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due under your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is cancelled, you must begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:

- (a) A written order from a court directing you to pay the rent in a manner specified in that order; or
- (b) Written instructions from the Assignee cancelling this notification.

Name of Assignee

By:

Officer/Authorized Agent of Assignee

N.R.S. 107A.300

107A.300. Effect of enforcement

The enforcement of an assignment of rents by one or more of the methods identified in [NRS 107A.260](#), [107A.270](#) and [107A.280](#), the application of proceeds by the assignee under [NRS 107A.310](#) after enforcement, the payment of expenses under [NRS 107A.320](#) or an action under subsection 3 of [NRS 107A.330](#) does not:

1. Make the assignee a mortgagee in possession of the real property;
2. Make the assignee an agent of the assignor;
3. Constitute an election of remedies that precludes a later action to enforce the secured obligation;
4. Make the secured obligation unenforceable;
5. Limit any right available to the assignee with respect to the secured obligation; or
6. Violate the provisions of [NRS 40.430](#).

N.R.S. 107A.310

107A.310. Application of proceeds

Unless otherwise agreed, an assignee that collects rents under this chapter or collects upon a judgment in an action under subsection 3 of [NRS 107A.330](#) shall apply the sums collected in the following order to:

1. The assignee's reasonable expenses of enforcing its assignment of rents, including, without limitation, to the extent provided for by agreement and not prohibited by law of this State other than this chapter, reasonable attorney's fees and costs incurred by the assignee;
2. Reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;
3. Payment of the secured obligation;
4. Payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and
5. The assignor.

N.R.S. 107A.320

107A.320. Application of proceeds to expenses of protecting real property; claims and defenses of tenant

1. Unless otherwise agreed by the assignee, and subject to subsection 3, an assignee that collects rents following enforcement under [NRS 107A.270](#) or [107A.280](#) need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.
2. Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.
3. This chapter does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this State other than this chapter.

N.R.S. 107A.330

107A.330. Turnover of rents; commingling and identifiability of rents; liability of assignor

1. If an assignor collects rents that the assignee is entitled to collect under this chapter:
 - (a) The assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and
 - (b) The assignee continues to have a security interest in the proceeds so long as they are identifiable.
2. For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including, without limitation, application of equitable principles, that is permitted under law of this State other than this chapter with respect to commingled funds.
3. In addition to any other remedy available to the assignee under law of this State other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by subsection 1, the assignee may recover from the assignor in a civil action:
 - (a) The proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under subsection 1; and
 - (b) Reasonable attorney's fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this State other than this chapter.
4. The assignee may maintain an action under subsection 3 without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in [NRS 107A.310](#).
5. Unless otherwise agreed, if an assignee entitled to priority under subsection 3 of [NRS 107A.240](#) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under [NRS 107A.270](#) or [107A.280](#), the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

6. As used in this section, “good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

N.R.S. 107A.340

107A.340. Perfection and priority of assignee's security interest in proceeds

1. An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

2. Except as otherwise provided in subsection 3, priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

3. An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.

4. As used in this section:

(a) “Article 9” means [NRS 104.9101 to 104.9709](#), inclusive, or, to the extent applicable to any particular issue, Article 9 of the Uniform Commercial Code as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in [NRS 104.9101 to 104.9709](#), inclusive.

(b) “Conflicting interest” means an interest in proceeds, held by a person other than an assignee, that is:

(1) A security interest arising under Article 9; or

(2) Any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

N.R.S. 107A.350

107A.350. Priority subject to subordination

This chapter does not preclude subordination by agreement as to rents or proceeds.

N.R.S. 107A.360

107A.360. Uniformity of application and construction

In applying and construing the Uniform Assignment of Rents 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.

N.R.S. 107A.370

107A.370. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, [15 U.S.C. §§ 7001 et seq.](#), but does not modify, limit or supersede Section 101(c) of that Act, [15 U.S.C. § 7001\(c\)](#), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, [15 U.S.C. § 7003\(b\)](#).

Rules of Civil Procedure, RULE 66

Formerly cited as NV ST Rule 66

RULE 66. RECEIVERS

An action wherein a receiver has been appointed shall not be dismissed except by order of the court.

NEW HAMPSHIRE

N.H. Rev. Stat. § 401-B:11

401-B:11 Receivership.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in RSA 402-C to take possession of the property of such domestic insurer and to conduct the business thereof.

N.H. Rev. Stat. § 498:1

498:1 Jurisdiction.

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, except that the court of probate shall have exclusive jurisdiction over equitable matters arising under its subject matter jurisdiction authority in RSA 547, RSA 547-C and [RSA 552:7](#).

N.H. Rev. Stat. § 498:12

498:12 Interlocutory Orders.

The appointment of commissioners and receivers, the reference of questions to masters, granting writs of injunction to stay proceedings or waste, making interlocutory decrees or orders and other incidental proceedings may be had and done by the superior court in any county, but injunctions so issued shall continue, unless sooner dissolved, only until the end of the next term for the county in which the proceedings are pending.

Superior Court Rule 165

RULE 165

Receivers, on appointment, shall file a bond with sufficient sureties for the faithful discharge of their duties, payable to the Clerk and his successor, for the benefit of all persons interested. They shall file inventories within thirty days after their appointment, and shall file accounts under oath of all their transactions, receipts and expenditures, on the first days of January and July, and at such other times as the Court may order.

NEW JERSEY

N.J.S.A. 14A:12-7

14A:12-7. Involuntary dissolution; other remedies

(1) The Superior Court, in an action brought under this section, may appoint a custodian, appoint a provisional director, order a sale of the corporation's stock as provided below, or enter a judgment dissolving the corporation, upon proof that

(a) The shareholders of the corporation are so divided in voting power that, for a period which includes the time when two consecutive annual meetings were or should have been held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors; or

(b) The directors of the corporation, or the person or persons having the management authority otherwise in the board, if a provision in the corporation's certificate of incorporation contemplated by subsection 14A:5-21(2) is in effect, are unable to effect action on one or more substantial matters respecting the management of the corporation's affairs; or

(c) In the case of a corporation having 25 or less shareholders, the directors or those in control have acted fraudulently or illegally, mismanaged the corporation, or abused their authority as officers or directors or have acted oppressively or unfairly toward one or more minority shareholders in their capacities as shareholders, directors, officers, or employees.

(2) An action may be brought under this section by one or more directors or by one or more shareholders. In such action, in the case of appointment of a custodian or a provisional director, the court may proceed in a summary manner or otherwise.

(3) One or more provisional directors may be appointed if it appears to the court that such an appointment may be in the best interests of the corporation and its shareholders, notwithstanding any provisions in the corporation's by-laws, certificate of incorporation, or any resolutions adopted by the board or shareholders. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until such time as he shall be removed by order of the court or, unless otherwise ordered by the court, by a vote or written consent of a majority of the votes entitled to be cast by the holders of shares entitled to vote to elect directors.

(4) A custodian may be appointed if it appears to the court that such an appointment may be in the best interests of the corporation and its shareholders, notwithstanding any provisions in the corporation's by-laws, certificate of incorporation, or any resolutions adopted by the shareholders or the board. Subject to any limitations which the court imposes, a custodian shall be entitled to exercise all of the powers of the corporation's board and officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors, until such time as he shall be removed by order of the court or, unless otherwise ordered by the court, by the vote or written consent of a majority of the votes entitled to be cast by the holders of shares entitled to vote to elect directors. Such powers may be exercised directly or through, or in conjunction with, the corporation's board or officers, in the discretion of the custodian or as the court may order. If so provided in the order appointing him, a custodian shall have the fact-determining powers of a receiver as provided in subsections 14A:14-5(e) and (f).

(5) Any custodian or provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation.

(6) Any custodian or provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's business, as the court shall direct. In addition, he shall submit to the court, if so

directed, his recommendations as to the appropriate disposition of the action. If, after the appointment of a custodian or provisional director, the court determines that a judgment of dissolution is in the best interests of the shareholders of the corporation, such a judgment shall be entered. The court may continue any custodian or provisional director in such office subsequent to the entry of a judgment of dissolution and until such time as the affairs of the corporation are wound up, or it may appoint such person or another as receiver, as provided in [section 14A:12-15](#).

(7) In any proceeding under this section, the court shall allow reasonable compensation to the custodian or provisional director for his services and reimbursement or direct payment of his reasonable costs and expenses which amounts shall be paid by the corporation.

(8) Upon motion of the corporation or any shareholder who is a party to the proceeding, the court may order the sale of all shares of the corporation's stock held by any other shareholder who is a party to the proceeding to either the corporation or the moving shareholder or shareholders, whichever is specified in the motion, if the court determines in its discretion that such an order would be fair and equitable to all parties under all of the circumstances of the case.

(a) The purchase price of any shares so sold shall be their fair value as of the date of the commencement of the action or such earlier or later date deemed equitable by the court, plus or minus any adjustments deemed equitable by the court if the action was brought in whole or in part under paragraph 14A:12-7(1)(c).

(b) Within five days after the entry of any such order, the corporation shall provide each selling shareholder with the information it is required to provide a dissenting shareholder under [section 14A:11-6](#), and within 10 days after entry of the order the purchasing party shall make a written offer to purchase at a price deemed by the purchasing party to be the fair value of the shares.

(c) If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall make the determination of the fair value, and the provisions of [sections 14A:11-8](#) through [14A:11-11](#) shall be followed insofar as they are applicable.

(d) Interest may be allowed at the rate and from the date determined by the court to be equitable, and if the court finds that the refusal of the shareholder to accept any offer of payment was arbitrary, vexatious, or otherwise not in good faith, no interest shall be allowed. If the court finds that the action was maintainable under paragraph 14A:12-7(1)(c), the court in its discretion may award to the selling shareholder or shareholders reasonable fees and expenses of counsel and of any experts, including accountants, employed by them.

(e) The purchase price shall be paid by the delivery of cash, notes, or other property, or any combination thereof within 30 days after the court has determined the fair value of the shares. The court shall, in its discretion, determine the method of payment of the purchase price. Whenever practicable, the purchase price shall be paid entirely in cash. If the court determines that an all cash payment is not practicable, it shall determine the amount of the cash payment, the kind and amount of any property, whether any note shall be secured, and other appropriate terms, including the interest rate of any note.

(f) Upon entry of an order for the sale of shares under this subsection, and provided the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus whatever additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus whatever other amounts as may be

awarded. In such event, the court may remove any custodian or provisional director who may have been appointed.

(9) In determining whether to enter a judgment of dissolution in an action brought under this section, the court shall take into consideration whether the corporation is operating profitably and in the best interests of its shareholders, but shall not deny entry of such a judgment solely on that ground.

(10) If the court determines that any party to an action brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including counsel fees incurred in connection with the action, to the injured party or parties.

N.J.S.A. 14A:12-14

14A:12-14. Disposition of rejected claims

If the corporation, or the receiver of a corporation appointed pursuant to this chapter, rejects in whole or in part any claim filed by a creditor, as defined in subsection 14A:12-12(3), the corporation or the receiver, as the case may be, shall mail notice of such rejection to the creditor. If the creditor does not bring suit upon such claim within 60 days from the time such notice was mailed to him, the creditor and all those claiming through or under him shall, except as otherwise provided in this chapter, be forever barred from suing on such claim or otherwise realizing upon or enforcing it. Proof of the mailing required by this section shall be made by an affidavit filed in the office of the Secretary of State.

N.J.S.A. 54:5-123

54:5-123. Right of redemption

The owner, mortgagee, occupant or other person having an interest in such lands so conveyed or transferred shall have the same rights to redeem the said lands as are provided in chapter five of Title 54 of the Revised Statutes.

N.J.S.A. 2A:50-31

2A:50-31. Sale pending foreclosure

When, in an action for the foreclosure or satisfaction of a mortgage covering real or personal property, or both, the property mortgaged is of such a character or so situated as to make it liable to deteriorate in value or to make its care or preservation difficult or expensive pending the determination of the action, the superior court may, before judgment, upon the application of any party to the action, order a sale of the mortgaged property to be made at public or private sale through a receiver, sheriff, or otherwise, as the court may direct. The proceeds of any such sale shall be brought into court, there to remain subject to the same liens and equities of the parties in interest as was the mortgaged property and to be disposed of as the court shall, by order or judgment, direct.

N.J.S.A. 2A:15-8

2A:15-8. Rights of bona fide purchasers, mortgagees or lienors before notice filed and prior to final judgment

Unless and until a notice of lis pendens is filed as herein provided, no action, as to which such notice is required, shall, before final judgment entered therein, be taken to be constructive notice to a bona fide purchaser or mortgagee of, or a person acquiring a lien on, the affected real estate.

R. 4:42-10

4:42-10. Search Fees

(a) Fees Allowable. In an action for the foreclosure of a mortgage or tax certificate or for partition and sale of realty, the court or the clerk may, as a matter of discretion, tax as part of the taxable costs all legal fees and reasonable charges necessarily paid or incurred in procuring searches relative to the title of the subject premises, provided that the minimum fee shall be \$75 and the maximum fee shall be \$500. If, however, 1% of the amount found due plaintiff is more than \$75 and less than \$500, such 1% shall be the maximum fee. In tax foreclosure actions brought to foreclose tax sale certificates on more than one parcel, the fees herein prescribed shall apply to each separate parcel, except, however, that in in rem tax foreclosure actions pursuant to [R. 4:64-7](#), the fee shall be \$75 for each separate parcel, and the maximum fee herein prescribed shall not apply. The court or the clerk may also authorize inclusion of all legal fees and charges necessarily incurred for searches required for unpaid taxes or municipal liens and for searches required to enable the officer making public sale to insert in the notices, advertisements and conditions of sale, a description of the estate or interest to be sold and the defects in title and liens or encumbrances thereon, as authorized by law.

(b) Affidavit of Fees; Limitations. Fees for searches shall not be taxed, unless prior to the taxing thereof the plaintiff or plaintiff's attorney has filed an affidavit setting forth an itemized statement of the fees and charges for which taxation is asked, and including only such fees and charges as were actually and necessarily paid or incurred for the purpose of the action. Without court order no search fees shall be certified or taxed for searches respecting the state of the title or encumbrances thereon prior to the commencement of the co-tenancy in partition actions, or prior to the date of the mortgage in foreclosure actions. In tax foreclosures where the plaintiff is other than a municipality a notice similar to that required by [R. 4:42-9\(a\)\(5\)](#) shall be sent where search fees are to be applied for.

R. 4:46-2

4:46-2. Motion and Proceedings Thereon

(a) Requirements in Support of Motion. The motion for summary judgment shall be served with briefs, a statement of material facts and with or without supporting affidavits. The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on. A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts.

(b) Requirements in Opposition to Motion. A party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement. Subject to [R. 4:46-5\(a\)](#), all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact. An opposing party may also include in the responding statement additional facts that the party contends are material and as to which there exists a genuine issue. Each such fact shall be stated in separately numbered paragraphs together with citations to the motion record.

(c) Proceedings and Standards on Motions. The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. The court shall find the facts and state its conclusions in accordance with R. 1:7-4. A summary judgment or order, interlocutory in character, may be rendered on any issue in the action (including the issue of liability) although there is a genuine factual dispute as to any other issue (including any issue as to the amount of damages). Subject to the provisions of R. 4:42-2 (judgment upon multiple claims), a summary judgment final in character may be rendered in respect of any portion of the damages claimed.

R. 4:64-1

4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than *In Rem* Tax Foreclosures

(a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to subparagraph (a)(2)(A) of this rule.

(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of R. 1:4-8(a).

(b) Contents of Mortgage Foreclosure Complaint. In an action in the Superior Court to foreclose a mortgage, the complaint shall state:

(1) the name of the obligor, mortgagor, obligee and mortgagee;

(2) the amount of the debt secured by the mortgage;

(3) the dates of execution of the debt instrument and the mortgage;

(4) the recording date, county recording office, and book and page recording reference of the mortgage securing the debt;

- (5) whether the mortgage is a purchase money mortgage;
- (6) a description of the pertinent terms or conditions of the debt instrument or mortgage and the facts establishing the default;
- (7) the default date;
- (8) if applicable, the acceleration of the debt's maturity date;
- (9) if applicable, any prepayment penalty;
- (10) if the plaintiff is not the original mortgagee or original nominee mortgagee, the names of the original mortgagee and a recital of all assignments in the chain of title;
- (11) the names of all parties in interest whose interest is subordinate or affected by the mortgage foreclosure action and, for each party, a description of the nature of the interest, with sufficient particularity to give the court and parties notice of the transaction or occurrence on which the interest is based including recording date of the lien, encumbrance, or instrument creating the interest;
- (12) a description of the subject property by street address, block and lot as shown on the municipal tax map and a metes and bounds description stating whether the recorded mortgage instrument includes that description; and
- (13) if applicable, whether the plaintiff has complied with the pre-filing notice requirements of the Fair Foreclosure Act or other notices required by law.

When a married person who has not executed the mortgage is made a party defendant, the plaintiff shall set out the particular facts relied on to bar the married person's rights and interest in the subject property, including whether the married person's rights and interest in the property were acquired before or after the date of the mortgage.

(c) Definition of Uncontested Action. An action to foreclose a mortgage or to foreclose a condominium lien for unpaid assessments pursuant to [N.J.S.A. 46:8B-21](#) shall be deemed uncontested if, as to all defendants,

- (1) a default has been entered as the result of failure to plead or otherwise defend; or
- (2) none of the pleadings responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it; or
- (3) all the contesting pleadings have been stricken or otherwise rendered noncontesting.

An allegation in an answer that a party is without knowledge or information sufficient to form a belief as to the truth of an allegation in the complaint shall not have the effect of a denial but rather of leaving the plaintiff to its proofs, and such an allegation in an answer shall be deemed noncontesting to the allegation of the complaint to which it is responsive.

(d) Procedure to Enter Judgment.

(1) *Prejudgment notices; responses.*

(A) Notice of motion for entry of judgment shall be served within the time prescribed by subparagraph (d)(2) of this rule on mortgagors and all other named parties obligated on the debt and all parties who have appeared in the action including defendants whose answers have been stricken or rendered noncontesting. The notice shall have annexed a copy of the affidavit of amount due filed with the court. If the premises are residential, the notice shall be served on each tenant, by personal service or registered or certified mail, return receipt requested, accompanied by the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the rules of court. Said notice of tenants' rights shall be contained in an envelope with the following text in bold and in at least 14 point type: "Important Notice about Tenants Rights." If the name of the tenant is unknown, the notice may be addressed to Tenant. Any party having the

right of redemption who disputes the correctness of the affidavit may file an objection stating with specificity the basis of the dispute and asking the court to fix the amount due.

(B) Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default.

(2) Application for judgment; entry.

If the action is uncontested as defined by paragraph (c) the court, on motion on 10 days notice if there are no other encumbrancers and on 30 days notice if there are other encumbrancers, and subject to paragraph (h) of this rule, may enter final judgment upon proof establishing the amount due. The application for entry of judgment shall be accompanied by proofs as required by [R. 4:64-2](#) and in lieu of the filing otherwise required by [R. 1:6-4](#) shall be only filed with the Office of Foreclosure in the Administrative Office of the Courts. The Office of Foreclosure may recommend entry of final judgment pursuant to [R. 1:34-6](#).

(e) Priorities; Subsequent Encumbrances. A party holding a subsequent encumbrance for a sum certain and filing an uncontesting answer may have the encumbrance included for payment in the foreclosure judgment on the filing of proofs pursuant to [R. 4:64-2](#). The judgment shall not order payment to a subsequent encumbrancer unless

(1) the priority of the encumbrance has been determined; and

(2) the encumbrancer has filed an affidavit stating that notice of the amount claimed due on the encumbrance has been served on all defendants whose addresses are known or readily ascertainable and none of the defendants, whose names and addresses shall be listed in the affidavit, has, within 10 days after the date of service of the notice made written objection to the validity, priority or amount of the encumbrance; and

(3) all prior encumbrances of parties to the action, including answering and defaulting parties, have been previously satisfied or ordered paid; and

(4) the encumbrance extends to the entire interest being foreclosed; and

(5) no cross-claim pursuant to [R. 4:64-5](#) has been filed.

No judgment by default shall be entered against a defendant postponing that defendant's rights or claims to those of any other defendant unless the priority of the right or claims of the latter and the facts upon which they depend are distinctly set forth in the pleadings. A controversy between such defendants may be settled upon application for surplus moneys pursuant to [R. 4:64-3](#).

(f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. If an action to foreclose or reforeclose a tax sale certificate in personam or to strictly foreclose a mortgage where provided by law is uncontested as defined by paragraph (c), the court, subject to paragraph (h) of this rule, shall enter an order fixing the amount, time and place for redemption upon proof establishing the amount due. The order of redemption in tax foreclosure actions shall conform to the requirements of [N.J.S.A. 54:5-98](#) and [R. 4:64-6\(b\)](#). The order for redemption or notice of the terms thereof shall be served by ordinary mail on each defendant whose address is known at least 10 days prior to the date fixed for redemption. Notice of the entry of the order of redemption, directed to each defendant whose address is unknown, shall be published in accordance with [R. 4:4-5\(a\)\(3\)](#) at least 10 days prior to the redemption date and, in the case of an unknown owner in a tax foreclosure action joined pursuant to [R. 4:26-5](#), a copy of the order or notice shall be posted on the subject premises at least 20 days prior to the redemption date in accordance with [N.J.S.A. 54:5-90](#). The court, on its own motion and on notice to all appearing parties including parties whose answers have been stricken, may enter final judgment upon proof of service of the order of redemption as herein required and the filing by plaintiff of an affidavit of non-redemption.

The Office of Foreclosure may, pursuant to R. 1:34-6, recommend the entry of both the order for redemption and final judgment.

(g) Security Interest Foreclosure. A plaintiff in the mortgage foreclosure action who also holds a security interest in personal property located on the subject real estate and who elects to have the personal property sold by the sheriff at public sale together with the real property may, by separate count, seek to foreclose the security interest in the mortgage foreclosure action, and the judgment of foreclosure shall direct a single public sale of the real estate and personal property. Notice of the sale of such personal property shall be given to the debtor and the secured creditors pursuant to [N.J.S.A. 12A:9-504](#). If necessary the court shall apportion the proceeds of sale, and the proceeds allocated to the personal property shall be distributed pursuant to [N.J.S.A. 12A:9-504](#) whether or not the persons entitled thereto are parties to the foreclosure action.

(h) Minors; Mentally Incapacitated Persons; Military Service. Except as otherwise provided by law or by [R. 4:26-3](#) (virtual representation) no judgment or order for redemption shall be entered under this rule against a minor or mentally incapacitated person who is not represented by a guardian or guardian ad litem appearing in the action. No judgment or order for redemption shall be entered against a defendant in military service of the United States who has defaulted by failing to appear unless that defendant is represented in the action by an attorney authorized by the defendant or appointed to represent defendant in the action and who has appeared or reported therein.

(i) Answer by United States and State of New Jersey. [Rule 4:6-1\(a\)](#) notwithstanding, the United States of America and the State of New Jersey, if a party defendant to a mortgage foreclosure action, shall have 60 days from the date of service of the complaint upon it to file and serve its answer.

R. 4:64-5

4:64-5. Joinder of Claims in Foreclosure

Unless the court otherwise orders on notice and for good cause shown, claims for foreclosure of mortgages shall not be joined with non-germane claims against the mortgagor or other persons liable on the debt. Only germane counterclaims and cross-claims may be pleaded in foreclosure actions without leave of court. Non-germane claims shall include, but not be limited to, claims on the instrument of obligation evidencing the mortgage debt, assumption agreements and guarantees. A defendant who chooses to contest the validity, priority or amount of any alleged prior encumbrance shall do so by filing a cross-claim against that encumbrancer, if a co-defendant, and the issues raised by the cross-claim shall be determined upon application for surplus money pursuant to [R. 4:64-3](#), unless the court otherwise directs.

R. 4:3-2

4:3-2. Venue in the Superior Court

(a) Where Laid. Venue shall be laid by the plaintiff in Superior Court actions as follows: (1) actions affecting title to real property or a possessory or other interest therein, or for damages thereto, or appeals from assessments for improvements, in the county in which any affected property is situate; (2) actions not affecting real property which are brought by or against municipal corporations, counties, public agencies or officials, in the county in which the cause of action arose; (3) except as otherwise provided by [R. 4:44A-1](#) (structured settlements), [R. 4:53-2](#) (receivership actions), [R. 4:60-2](#) (attachments), [R. 5:2-1](#) (family actions), [R. 4:83-4](#) (probate actions), and [R. 6:1-3](#) (Special Civil Part actions), the venue in all other actions in the Superior

Court shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant; and (4) actions on and objections to certificates of debt for motor vehicle surcharges that have been docketed as judgments by the Superior Court Clerk pursuant to [N.J.S.A. 17:29A-35](#) shall be brought in the county of residence of the judgment debtor.

(b) Corporate Parties. For purposes of this rule, a corporation shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business.

(c) Exceptions in Multicounty Vicinages. With the approval of the Chief Justice, the assignment judge of any multicounty vicinage may order that in lieu of laying venue in the county of the vicinage as provided by these rules, venue in any designated category of cases shall be laid in any single county within the vicinage.

R. 4:3-2

4:3-2. Venue in the Superior Court

(a) Where Laid. Venue shall be laid by the plaintiff in Superior Court actions as follows: (1) actions affecting title to real property or a possessory or other interest therein, or for damages thereto, or appeals from assessments for improvements, in the county in which any affected property is situate; (2) actions not affecting real property which are brought by or against municipal corporations, counties, public agencies or officials, in the county in which the cause of action arose; (3) except as otherwise provided by [R. 4:44A-1](#) (structured settlements), [R. 4:53-2](#) (receivership actions), [R. 4:60-2 \(attachments\)](#), [R. 5:2-1](#) (family actions), [R. 4:83-4](#) (probate actions), and [R. 6:1-3](#) (Special Civil Part actions), the venue in all other actions in the Superior Court shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant; and (4) actions on and objections to certificates of debt for motor vehicle surcharges that have been docketed as judgments by the Superior Court Clerk pursuant to [N.J.S.A. 17:29A-35](#) shall be brought in the county of residence of the judgment debtor.

(b) Corporate Parties. For purposes of this rule, a corporation shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business.

(c) Exceptions in Multicounty Vicinages. With the approval of the Chief Justice, the assignment judge of any multicounty vicinage may order that in lieu of laying venue in the county of the vicinage as provided by these rules, venue in any designated category of cases shall be laid in any single county within the vicinage.

R. 4:53-3

4:53-3. Employment of Attorney or Accountant

A receiver may employ an attorney or accountant only if the court determines that such employment is necessary to the proper conservation and administration of the estate. No order authorizing such employment shall be entered until after a hearing on the fiduciary's sworn application setting forth facts to support the need therefor, except that where necessary to prevent immediate and irreparable damage such employment may be authorized by the court until an application for authorization of such employment can be made pursuant to this rule. Notice of the application together with a copy of affidavit shall be mailed by ordinary mail, not less than 15 days prior to the date for hearing fixed thereon to all creditors or such of them as the court shall

direct and, by certified mail, return receipt requested, to the District Director of Internal Revenue for the Internal Revenue District in which the proceedings are commenced, to the United States Attorney for the District of New Jersey, and to the Attorney General for the State of New Jersey. The court shall authorize such employment if satisfied of the necessity of the employment and that the attorney or accountant is not interested in the litigation or in any of the parties thereto in such a way as would disqualify the attorney or accountant from properly serving the receiver as a fiduciary for all the stockholders and unsecured creditors of the estate. On request by an interested party, the court shall require the receiver to be examined under oath on these issues. The employment of more than one attorney may be authorized, but the total fees allowed them shall not be increased because of the number of attorneys employed.

NEW MEXICO

N. M. S. A. 1978, § 44-8-1

§ 44-8-1. Short title

This act may be cited as the “Receivership Act”.

N. M. S. A. 1978, § 44-8-2

§ 44-8-2. Purpose

The purpose of the Receivership Act is to provide a framework for the creation and administration of receiverships.

N. M. S. A. 1978, § 44-8-3

§ 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.

N. M. S. A. 1978, § 44-8-4

§ 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.

N. M. S. A. 1978, § 44-8-5

§ 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.

N. M. S. A. 1978, § 44-8-6

§ 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.

N. M. S. A. 1978, § 44-8-7

§ 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.

N. M. S. A. 1978, § 44-8-9

§ 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.

N. M. S. A. 1978, § 44-8-9

§ 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.

N. M. S. A. 1978, § 44-8-10

§ 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.

NEW YORK

McKinney's RPAPL § 1325

§ 1325. Receiver

1. Where 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.
2. Where a receiver has been appointed, upon the application of the plaintiff or of any holder of a certificate evidencing an undivided interest in the mortgage or mortgage debt and upon proof that no answer has been interposed affecting the validity of the mortgage or the amount due thereon, or asserting any prior lien, or asserting a plea of tender of payment of the amount due, or which if sustained would affect in any way the right of the plaintiff to a judgment in foreclosure and to the payment of the amount claimed by the plaintiff in his complaint to be due, the court may direct that the receiver of the rents appointed in such action apply, during the pendency of the action, the rents received by him towards the payment of accrued interest on the mortgage, provided due provision shall have been made for the payment of taxes, administration expenses, fees and charges and such reserve as the court may direct. Any monies so paid over by the receiver shall be deducted from the amount of the judgment in said action.
 - 2-a. Where a receiver has been appointed, the order of appointment shall direct the owner or lessee of the mortgaged premises to turn over to the receiver all security deposits received by such owner or lessee and shall further direct the receiver to hold the security subject to such disposition thereof as shall be provided in a further order of the court to be made and entered in the foreclosure action, in accordance with the provisions of [section 7-105 of the general obligations law](#).
3. In a city with a population of one million or more persons an order appointing a receiver to receive the rents and profits of a multiple dwelling shall provide that the receiver:
 - (a) register with any municipal department as provided by applicable law; and
 - (b) expend rents and income and profits as described in subdivision two of this section, except that a priority shall be given to the correction of immediately hazardous and hazardous violations of housing maintenance laws within the time set by orders of any municipal department, or, if not practicable, seek a postponement of the time for compliance.

McKinney's Real Property Law § 254

§ 254. Construction of clauses and covenants in mortgages and bonds or notes

In mortgages of real property, and in bonds and notes secured thereby or in assignments of mortgages and bonds and mortgages and notes, or in agreements to extend or to modify the terms of mortgages and bonds and mortgages and notes, the following or similar clauses and covenants must be construed as follows:

10. Mortgagee entitled to appointment of receiver. 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.

McKinney's CPLR § 6401

§ 6401. Appointment and powers of temporary receiver

(a) Appointment of temporary receiver; joinder of moving party. Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

(b) Powers of temporary receiver. The court appointing a receiver may authorize him to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such conditions and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. Upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the property.

(c) Duration of temporary receivership. A temporary receivership shall not continue after final judgment unless otherwise directed by the court.

NORTH CAROLINA

N.C.G.S.A. § 1-501

§ 1-502.1. Applicant for receiver to furnish bond to adverse party

Before a judge may appoint a receiver, the judge shall require the party making application for the appointment to furnish a bond payable to the adverse party in a form and amount approved by the judge. The bond shall secure payment by the applicant of all damages, including reasonable attorney fees, sustained by the adverse party by the appointment and acts of the receiver if the appointment is vacated or otherwise set aside. The judge may require that the amount of bond be increased for this purpose any time after the appointment of a receiver.

N.C.G.S.A. § 1-502

§ 1-502. In what cases appointed

A receiver may be appointed--

- (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had on application to the court.
- (2) After judgment, to carry the judgment into effect.
- (3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.
- (4) In cases provided in [G.S. 1-507.1](#) and in like cases, of the property within this State of foreign corporations.
- (5) In cases wherein restitution is sought for violations of [G.S. 75-1.1](#).
- (6) In cases involving partition of real property, pursuant to [G.S. 46-3.1](#).

The provisions of [G.S. 1-507.1](#) through [1-507.11](#) are applicable, as near as may be, to receivers appointed hereunder.

N.C.G.S.A. § 1-503

§ 1-503. Appointment refused on bond being given

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. In the progress of the action the court may in its discretion require additional sureties on such undertaking.

N.C.G.S.A. § 1-504

§ 1-504. Receiver's bond

A receiver appointed in an action or special proceeding must, before entering upon his duties, execute and file with the clerk of the court in which the action is pending an undertaking payable to the adverse party with at least two sufficient sureties in a penalty fixed by the judge making the appointment, conditioned for the faithful discharge of his duties as receiver. And the judge having jurisdiction thereof may at any time remove the receiver, or direct him to give a new undertaking, with new sureties, and on the like condition. This section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver.

N.C.G.S.A. § 1-505

§ 1-505. Sale of property in hands of receiver

In a case pending in the Superior Court Division in which a receiver has been appointed, the resident superior court judge or a superior court judge regularly holding the courts of the district 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. In a case pending in the District Court Division in which a receiver has been appointed, the chief district judge or a district judge designated by the chief district judge to hear motions and enter interlocutory orders shall have the power and authority to order a sale of any property, real or personal, in the hands of a duly appointed receiver. 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. The procedure for such sales shall be as provided in Article 29A of Chapter 1 of the General Statutes.

N.C.G.S.A. § 1-505

§ 1-505. Sale of property in hands of receiver

In a case pending in the Superior Court Division in which a receiver has been appointed, the resident superior court judge or a superior court judge regularly holding the courts of the district 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. In a case pending in the District Court Division in which a receiver has been appointed, the chief district judge or a district judge designated by the chief district judge to hear motions and enter interlocutory orders shall have the power and authority to order a sale of any property, real or personal, in the hands of a duly appointed receiver. 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. The procedure for such sales shall be as provided in Article 29A of Chapter 1 of the General Statutes.

N.C.G.S.A. § 1-507

§ 1-507. Validation of sales made outside county of action

All receiver's sales made prior to March 16, 1931, where orders were made and confirmation decreed or where either orders were made or confirmation decreed outside the county in which said actions were pending by a resident judge or the judge assigned to hold the courts of the district are hereby validated, ratified and confirmed.

N.C.G.S.A. § 1-507.1

§ 1-507.1. Appointment and removal

When a corporation becomes insolvent or suspends its ordinary business for want of funds, or is in imminent danger of insolvency, or has forfeited its corporate right, or its corporate existence

has expired by limitation, a receiver may be appointed by the court under the same regulations that are provided by law for the appointment of receivers in other cases; and the court may remove a receiver or trustee and appoint another in his place, or fill any vacancy. Everything required to be done by receivers or trustees is valid if performed by a majority of them.

N.C.G.S.A. § 1-507.2

§ 1-507.2. Powers and bond

The receiver has power and authority to--

- (1) Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation.
- (2) Foreclose mortgages, deeds of trust, and other liens executed to the corporation.
- (3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the corporation, and he shall, upon application by him, be substituted as party plaintiff in the place of the corporation in any suit or proceeding pending at the time of his appointment.
- (4) Sell, convey, and assign all of the said estate, rights, and interest.
- (5) Appoint agents under him.
- (6) Examine persons and papers, and pass on claims as elsewhere provided in this part.
- (7) Do all other acts which might be done by the corporation, if in being, that are necessary for the final settlement of its unfinished business.

The powers of the receiver may be continued as long as the court thinks necessary, and the receiver shall hold and dispose of the proceeds of all sales of property under the direction of the court, and, before acting, must enter into such bond and comply with such terms as the court prescribes.

N.C.G.S.A. § 1-507.3

§ 1-507.3. Title and inventory

All of the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects, upon the appointment of a receiver, forthwith vest in him, and the corporation is divested of the title thereto. Within thirty days after his appointment he shall lay before the court a full and complete inventory of all estate, property, and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and shall make a report of his proceedings to the superior court at such times as the court may direct during the continuance of the trust.

N.C.G.S.A. § 1-507.4

§ 1-507.4. Foreclosure by receivers and trustees of corporate mortgagees or grantees

Where real estate has been conveyed by mortgage deed, or deed of trust to any corporation in this State authorized to accept such conveyance for the purpose of securing the notes or bonds of the grantor, and such corporation thereafter shall be placed in the hands of a receiver or trustee in properly instituted court proceedings, then such receiver or trustee under and pursuant to the orders and the decrees of the said court or other court of competent jurisdiction may sell such real property pursuant to the orders and the decrees of the said court or may foreclose and sell such real property as provided in such mortgage deed, or deed of trust, pursuant to the orders and decrees of such court.

All such sales shall be made as directed by the court in the cause in which said receiver is appointed or the said trustee elected, and for the satisfaction and settlement of such notes and bonds secured by such mortgage deed or deed of trust or in such other actions for the sales of the said real property as the said receiver or trustee may institute and all pursuant to the orders and decrees of the court having jurisdiction therein.

All sales of real property made prior to April 10, 1931 by such receiver or trustee of and pursuant to the orders of the courts of competent jurisdiction in such cases, are hereby validated.

N.C.G.S.A. § 1-507.5

§ 1-507.5. May send for persons and papers; penalty for refusing to answer

The receiver has power to send for persons and papers, to examine any persons, including the creditors, claimants, president, directors, and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills, choses in action, real and personal estate and effects of every kind; and also respecting its debts, obligations, contracts, and liabilities, and the claims against it; and if any person refuses to be sworn or affirmed, or to make answers to such questions as may be put to him, or refuses to declare the whole truth touching the subject matter of the examination, the court may, on report of the receiver, commit such person as for contempt.

N.C.G.S.A. § 1-507.6

§ 1-507.6. Proof of claims; time limit

All claims against an insolvent corporation must be presented to the receiver in writing; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver directs, and shall produce such books and papers relating to the claim as shall be required. The receiver has power to examine under oath or affirmation all witnesses produced before him touching the claim, and shall pass upon and allow or disallow the claims or any part thereof, and notify the claimants of his determination. The court may limit the time within which creditors may present and prove to the receiver their respective claims against the corporation, and may bar all creditors and claimants failing to do so within the time limited from participating in the distribution of the assets of the corporation. The court may also prescribe what notice, by publication or otherwise, must be given to creditors of such limitation of time.

N.C.G.S.A. § 1-507.7

§ 1-507.7. Report on claims to court; exceptions and jury trial

It is the duty of the receiver to report to the session of the superior court subsequent to a finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within 10 days after notice of the finding by the receiver, and not later than within the first three days of the said term; and, if, on an exception so filed, a jury trial is demanded, it is the duty of the court to prepare a proper issue and submit it to a jury; and if the demand is not made in the exceptions to the report the right to a jury trial is waived. The judge may, in his discretion, extend the time for filing such exceptions. Provided, that no court shall issue any order of distribution or order of discharge of a receiver until said receiver has proved to the satisfaction of the court that written notice has been mailed to the last known address of every claimant who has properly filed claim with the receiver, to the effect that such orders will be applied for at a certain time and place therein set forth and by producing a receipt issued by

the United States post office, showing that such notice has been mailed to each of such claimant's last known address at least 20 days prior to the time set for hearing and passing upon such application to the court for said orders of distribution and/or discharge.

As to delinquency proceedings for insurance companies under Article 30 of General Statutes Chapter 58, such prior notice need be given only to those claimants whose presented claims have been denied or have not been adjudicated; and notice is satisfied by mailing either a general notice of application for distribution showing disposition of the claims or a copy of the application to such claimants. Proof of mailing with the United States Postal Service may be made by the receiver's certificate of service without either the necessity of postal receipt or the listing of individual claimants names and addresses.

N.C.G.S.A. § 1-507.8

§ 1-507.8. Property sold pending litigation

When the property of an insolvent corporation is at the time of the appointment of a receiver encumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court may order the receiver to sell the same, clear of encumbrance, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale to be disposed of as the court directs. And the receiver or receivers making such sale is hereby authorized and directed to report to the resident judge of the district or to the judge holding the courts of the district in which the property is sold, the said sale for confirmation, the said report to be made to the said judge in any county in which he may be at the time; but before acting upon said report, the said receiver or receivers shall publish in some newspaper published in the county or in some newspaper of general circulation in the county, where there is no newspaper published in the county, a notice directed to all creditors and persons interested in said property, that the said receiver will make application to the judge (naming him) at a certain place and time for the confirmation of his said report, which said notice shall be published at least 10 days before the time fixed therein for the said hearing. And the said judge is authorized to act upon said report, either confirming it or rejecting the sale; and if he rejects the sale it shall be competent for him to order a new sale and the said order shall have the same force and effect as if made at a regular session of the superior court of the county in which the property is situated.

N.C.G.S.A. § 1-507.9

§ 1-507.9. Compensation and expenses; counsel fees

Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the court shall allow a reasonable compensation to the receiver for his services, not to exceed five percent upon receipts and disbursements, and the costs and expenses of administration of his trust and of the proceedings in said court, to be first paid out of said assets. The court is authorized and empowered to allow counsel fees to an attorney serving as a receiver (in addition to the commissions allowed him as receiver as herein provided) where such attorney in behalf of the receivership renders professional services, as an attorney, which are beyond the ordinary routine of a receivership and of a type which would reasonably justify the retention of legal counsel by any such receiver not himself licensed to practice law.

N.C.G.S.A. § 1-507.10

§ 1-507.10. Debts provided for, receiver discharged

When a receiver has been appointed, and it afterwards appears that the debts of the corporation have been paid, or provided for, and that there remains, or can be obtained by further contributions, sufficient capital to enable it to resume its business, the court may, in its discretion, a proper case being shown, discharge the receiver, and decree that the property, rights, and franchises of the corporation revert to it, and thereafter the corporation may resume control of the same, as fully as if the receiver had never been appointed.

N.C.G.S.A. § 1-507.11

§ 1-507.11. Reorganization

When a majority in interest of the stockholders of the corporation have agreed upon a plan for its reorganization and a resumption by it of the management and control of its property and business, the corporation may, with the consent of the court, upon the reconveyance to it of its property and franchises, either by deed or decree of the court, mortgage the same for an amount necessary for the purposes of the reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

NORTH DAKOTA

NDCC, 32-10-01

§ 32-10-01. Receiver--When appointed

A receiver may be appointed by the court in which an action is pending, or by a judge thereof:

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 when 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 the mortgage and sale of the mortgaged property, when 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.
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 proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the debtor's property in satisfaction of the judgment.
5. In the cases provided in this code, when a corporation or limited liability company has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights, and in like cases within this state, of foreign corporations and of foreign limited liability companies.
6. In all other cases in which receivers heretofore have been appointed by the usages of courts of equity.

NDCC, 32-10-02

§ 32-10-02. Who may be receiver--Undertaking by applicant

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. If a receiver is 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 the defendant may sustain by reason of the appointment of such receiver and the entry by the receiver upon the receiver's duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause, and the court in its discretion at any time after said appointment may require an additional undertaking.

NDCC, 32-10-03

§ 32-10-03. Qualification of receiver

Before entering upon the duties of receiver, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court or judge, must execute an undertaking to such person and in such sum as the court may direct, to the effect that the receiver will faithfully discharge the duties of receiver in the action and will obey the orders of the court therein.

NDCC, 32-10-01

§ 32-10-04. Powers

The receiver, under the control of the court, has power to bring and defend actions in the receiver's own name as receiver, to take and keep possession of the property, to receive rents, to collect debts, to compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

NDCC, 32-10-05

§ 32-10-05. Investment of funds on consent

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.

Rule 66, N.D.R.Civ.P.

Rule 66. Receivers

<Text of rule effective March 1, 2013. See, also, rule effective until March 1, 2013.>

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. The practice in administering an estate by a receiver or a similar court-appointed officer must accord with state statute or with a local rule. A foreign receiver has capacity to sue in any district court, but the receiver's rights are subordinate to those of local creditors. An action in which a receiver has been appointed may be dismissed only by court order.

OHIO

R.C. § 2735.01

2735.01 Appointment of receiver

A receiver may be appointed by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in causes pending in such courts respectively, in the following cases:

(A) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a 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 a party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(B) In an action by a mortgagee, for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt;

(C) After judgment, to carry the judgment into effect;

(D) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;

(E) When a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

(F) In all other cases in which receivers have been appointed by the usages of equity.

R.C. § 2735.02

2735.02 Qualifications of receiver

No party, attorney, or person interested in an action shall be appointed receiver therein except by consent of the parties. No person except a resident of this state shall be appointed or act as receiver of a railroad or other corporation within this state.

R.C. § 2735.03

2735.03 Oath and bond

Before a receiver appointed as provided in [section 2735.01 of the Revised Code](#) enters upon his duties, he must be sworn to perform his duties faithfully, and, with surety approved by the court, judge, or clerk, execute a bond to such person, and in such sum as the court or judge directs, to the effect that such receiver will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

R.C. § 2735.04

2735.04 Powers of receiver

Under the control of the court which appointed him, as provided in [section 2735.01 of the Revised Code](#), a receiver may bring and defend actions in his own name as receiver, take and keep possession of property, receive rents, collect, compound for, and compromise demands, make transfers, and generally do such acts respecting the property as the court authorizes.

R.C. § 2735.05

2735.05 Examination

On application of the receiver or of a creditor, the court appointing such receiver as provided in [section 2735.01 of the Revised Code](#) may, upon reasonable notice, require any person, or officer or director of a corporation, or member of a partnership for which a receiver has been appointed, to attend and submit to an examination on oath as to its property, trade, dealings with others, accounts, and debts due or claimed from it, and as to all other matters concerning the property and estate of the person, partnership, or corporation for which such receiver has been appointed.

R.C. § 2735.06**2735.06 Investment of funds by receiver**

By order of the court appointing a receiver as provided in [section 2735.01 of the Revised Code](#), funds in the hands of such receiver may be invested upon interest. No such order shall be made except upon the consent of all the parties to the action.

OKLAHOMA

12 Okl.St. Ann. § 1551

§ 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:¹
 - 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.

12 Okl.St. Ann. § 1552

§ 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.

12 Okl.St. Ann. § 1553

§ 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.

12 Okl.St. Ann. § 1554

§ 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.

12 Okl.St. Ann. § 1555

§ 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.

12 Okl.St. Ann. § 1556

§ 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.

12 Okl.St. Ann. § 1557

§ 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.

12 Okl.St. Ann. § 1559

§ 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.

12 Okl.St. Ann. § 852

§ 852. Receiver may be appointed--Forbidding transfer of property

The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner and with like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

12 Okl.St. Ann. § 853

§ 853. Sale of equitable interests in realty

If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor or mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person or persons holding the legal estate, or the person or persons having a lien on or interest in the same, without controversy as to the interest of such person or persons holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the debtor's interest therein. Such sale shall be conducted in all respects in the same manner as is provided by this code for the sale of real estate upon execution; and the proceedings of the sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered, or the transcript has been filed as aforesaid, as in case of sale upon execution.

12 Okl.St. Ann. § 854

§ 854. Sheriff as receiver--Bond of receiver--Other person appointed receiver

If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as receiver, and no additional oath shall be required of him; if any other person shall be appointed receiver, he shall give a written undertaking, in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge the duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section shall be to the State of Oklahoma, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

12 Okl.St. Ann. § 855

§ 855. Rights and powers of receiver

The receiver shall be vested with the property and effects and rights in action of the judgment debtor, not exempt by law, or such part thereof as the court or judge may order, and may sue for, collect, and recover, and dispose of the same, and apply the proceeds according to the order of the court or judge, and generally may do such acts concerning the property as the court or judge may authorize.

12 Okl.St. Ann. § 856

§ 856. Receiver entitled to possession of property

The court or judge may order the delivery, to the receiver, by the judgment debtor, or any other person in whose possession the same may be, of any notes, bills, accounts, contracts, books or other evidence of indebtedness or right in action, of the judgment debtor, and may enforce such order by attachment, as for a contempt.

12 Okl.St. Ann. § 861

§ 861. Fees allowed taxed as costs

The judge shall allow to clerks, sheriffs, referees, receivers and witnesses such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce, by order, the collection thereof, from such party or parties as ought to pay the same.

OREGON

OR Rules Civ. Proc., ORCP 80

ORCP 80. Receivers

A Receiver defined. A receiver is a person appointed by a circuit court, or judge thereof, to take charge of property during the pendency of a civil action or upon a judgment or order therein, and to manage and dispose of it as the court may direct.

B When appointment of receiver authorized. Subject to the requirements of [Rule 82A\(2\)](#), a receiver may be appointed by a circuit court in the following cases:

B(1) Provisionally to protect property. Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B(2) To effectuate judgment. After judgment to carry the same into effect.

B(3) To dispose of property, to preserve during appeal or when execution unsatisfied. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B(4) Creditor's action. In an action brought by a creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

B(5) Attaching creditor. At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

B(6) Protect, preserve, or restrain property subject to execution. At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

B(7) Corporations and associations; when provided by statute. In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

B(8) Corporations and associations; to protect property or interest of stockholders or creditors. When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

C Appointment of receivers; notice. No receiver shall be appointed without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

D Form of order appointing receivers. Every order or judgment appointing a receiver:

D(1) Shall contain a reasonable description of the property included in the receivership;

D(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;

D(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

D(4) May require periodic reports from the receiver.

E Notice to persons interested in receivership. A general receiver appointed to liquidate and wind up affairs 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.

F Special notices.

F(1) **Required notice.** Creditors filing claims with the receiver, all persons making contracts with the receiver, all persons having known claims against the receiver, all persons actually or constructively known to be claiming any interest in receivership property, and all persons against whom the receiver asserts claims shall receive notice of any proposed action by the court affecting their rights.

F(2) **Request for special notice.** At any time after a receiver is appointed, any person interested in the receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of the receivership:

F(2)(a) Filing of motions for sales, leases, or mortgages of any property in the receivership;

F(2)(b) Filing of accounts;

F(2)(c) Filing of motions for removal or discharge of the receiver; and

F(2)(d) Such other matters as are officially requested and approved by the court.

A request shall state the post-office address of the person, or such person's attorney.

F(3) **Form and service of notices.** Any notice required by this section shall be served in the manner provided in [Rule 9](#), at least five days before the hearing on any of the matters above described, unless a different period is fixed by order of the court.

G Termination of receiverships. 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.

O.R.S. § 60.667

60.667. Receivers or custodians

(1) A court in a judicial proceeding brought to dissolve a corporation, or in a judicial proceeding for shareholder remedies described in [ORS 60.952](#), may appoint one or more receivers to wind up and liquidate the business and affairs of the corporation or one or more custodians to manage the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended periodically. Among other powers:

(a) The receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(5) The court periodically during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

O.R.S. § 86.010

86.010. Mortgagee's interest

A mortgage of real property is not a conveyance so as to enable the owner of the mortgage to recover possession of the property without a foreclosure and sale. This section is not intended as a limitation upon the right of the owner of real property to mortgage or pledge the rents and profits thereof, nor as prohibiting the mortgagee or pledgee of such rents and profits, or any trustee under a mortgage or trust deed from entering into possession of any real property, other than farmlands or the homestead of the mortgagor or successor in interest, for the purpose of operating the same and collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of the property and collect the rents and profits thereof.

PENNSYLVANIA

Pa.R.C.P. No. 1533

Rule 1533. Special Relief. Receivers

(a) A temporary receiver may be appointed without notice if required by the exigencies of the case. Except as otherwise provided by an Act of Assembly, such appointment may not be made unless

(1) the plaintiff files a bond in an amount fixed and with security approved by the court, naming the Commonwealth as obligee, conditioned that if the appointment is vacated because improperly made the plaintiff shall pay to any person injured all damages sustained by reason of such appointment and all legally taxable costs and fees, or

(2) the plaintiff deposits with the prothonotary legal tender of the United States in an amount fixed by the court to be held by the prothonotary upon the same condition as provided for the bond.

A hearing on the continuation or revocation of the appointment shall be held promptly. Notice of the hearing shall be given by the temporary receiver to all persons interested, including creditors and stockholders, if any, whose addresses are known or can be ascertained.

(b) No officer of a corporation or member of a partnership shall be appointed sole temporary receiver of the property of the corporation or partnership but, after hearing, an officer or member may be appointed sole permanent receiver.

(c) The court may refuse to appoint a receiver for property and may permit the person in possession to retain it if the person gives such security as the court shall direct. The court may remove a receiver and restore the property to the person from whom it was taken if the person gives such security as may be required.

(d) Except as otherwise provided by an Act of Assembly, a receiver, whether temporary or permanent, must give such security for the faithful performance of the receiver's duty as the court shall direct. A receiver shall not act until he or she has given the security required.

Note: See [Rule 1549\(16\)](#) for reference to Act of Assembly relieving the Secretary of Banking as statutory receiver from requirement of bond. The same practice is followed in connection with the appointment of the Insurance Commissioner as receiver.

(e) Except in the case of a public utility, an order authorizing a receiver to operate a business shall be limited to a fixed period, which may be extended from time to time upon cause shown after notice to all parties in interest.

(f) Except as otherwise provided by an Act of Assembly, the court upon appointing a permanent receiver shall also appoint two appraisers who shall promptly inventory and appraise all assets of the defendant. The compensation of the appraisers shall be determined by the court.

Note: For Acts of Assembly containing provisions as to receivers, appraisers and inventories, see sections 12 and 15 of the Act of June 4, 1901, P.L. 404, No. 231, [39 P.S. §§ 42, 48](#), (insolvency proceedings), section 501 et seq. of the Act of May 17, 1921, P.L. 789, as amended, [40 P.S. § 221.1 et seq.](#)(insurance department statutory receiverships) and sections 605, 606 and 701 of the Act of May 15, 1933, P.L. 565, [71 P.S. §§ 733-605, 733-606, 733-701](#)(banking department statutory receiverships).

(g) Every order appointing a permanent receiver shall fix the time within which the receiver shall file a report setting forth the property of the debtor, the interests in and claims against it, its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled.

(h) These rules shall not be deemed to impose upon the Secretary of Banking, the Insurance Commissioner or other public officer acting as statutory receiver any duties or restrictions which are in conflict with the Acts of Assembly authorizing their appointment and prescribing their rights and duties.

Note: See Section 501 of the Act of May 17, 1921, P.L. 789, added December 14, 1977, P.L. 280, No. 92, [40 P.S. § 221.1 et seq.](#) and Sections 606 and 701 of the Act of May 15, 1933, P.L. 565, [71 P.S. §§ 733-606, 733-701](#), relating to appointment of the Insurance Commissioner and the Secretary of Banking as receiver.

Pa.R.C.P. No. 3118

Rule 3118. Supplementary Relief in Aid of Execution

(a) On petition of the plaintiff, after notice and hearing, the court in which a judgment has been entered may, before or after the issuance of a writ of execution, enter an order against any party or person

(1) enjoining the negotiation, transfer, assignment or other disposition of any security, document of title, pawn ticket, instrument, mortgage, or document representing any property interest of the defendant subject to execution;

(2) enjoining the transfer, removal, conveyance, assignment or other disposition of property of the defendant subject to execution;

(3) directing the defendant or any other party or person to take such action as the court may direct to preserve collateral security for property of the defendant levied upon or attached, or any security interest levied upon or attached;

(4) directing the disclosure to the sheriff of the whereabouts of property of the defendant;

(5) directing that property of the defendant which has been removed from the county or concealed for the purpose of avoiding execution shall be delivered to the sheriff or made available for execution; and

(6) granting such other relief as may be deemed necessary and appropriate.

(b) The petition and notice of the hearing shall be served only within the Commonwealth in the manner prescribed by [Rule 440](#) for the service of legal papers other than original process.

(c) Violation of the mandate or injunction of the court may be punished as a contempt.

Note: Service of a writ of execution against a garnishee enjoins the garnishee as provided in [Rule 3111](#) but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.

Pa.R.C.P. No. 3125

Rule 3125. Perishable Property. Sale, Preservation or Other Disposition

When perishable property is levied upon or attached, the court may make such order relating to its preservation, sale or disposition as it shall deem proper.

RHODE ISLAND

Super.R.Civ.P. Rule 66

Rule 66. Receivers

(a) **Number of Receivers.** Ordinarily but one receiver shall be appointed upon application for the appointment of a receiver, and, unless special exigencies shall appear, such receiver shall be a resident of this state.

(b) **Appointment of Temporary Receiver.** A temporary receiver shall not be appointed ex parte except upon a 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. Before acting upon an application for the appointment of a temporary receiver the court may call in for consultation, so far as practicable, all the interested parties or their counsel, or the court may in its discretion set down the matter of the appointment of a temporary receiver at as early a date as is practicable, with such notice as the court may order.

If an application for the ex parte appointment of a temporary receiver is made to and denied by one justice of the court such application shall not be again made to any other justice unless there is a material change in circumstances. The justice to whom such application was originally presented shall note his or her action upon the complaint containing such application.

(c) **Counsel to Receiver.** 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.

(d) **Form of Decree.** The decree appointing a permanent receiver shall include, among other matters, orders with respect to the operation of the business by the receiver if such operation is sought, and shall definitely fix the time for (1) filing of an inventory by the receiver, (2) filing of statements of assets and financial condition of the receivership, (3) the filing of reports respecting creditors, debtors and claimants, and (4) the time within which creditors and claimants shall file their claims.

The court may in its discretion require that a decree appointing a temporary receiver shall include the matters provided for in this rule, and in every case where a temporary receivership shall have continued for a period of more than thirty (30) days a decree shall be entered in accordance with the provisions of this rule.

(e) **Reports of Condition.** Reports 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. The court may, upon application duly made, order that these reports be sealed and be opened and subject to inspection only upon application to the court.

(f) **Filing of Claims; Reports Thereon.** Each creditor or claimant shall, before a day certain to be fixed by the court in each case, in the decree appointing the receiver, file with the receiver a statement of his or her claim, which statement shall set out his or her address, the nature and

amount of such claim and of any security or lien held by the creditor or claimant to which he or she is or claims to be entitled and also any claim to preference or priority in payment to any other creditor or claimant.

The receiver shall file a report recommending the allowance or disallowance, in whole or in part, of all claims filed with the receiver within a reasonable time after the period fixed by the court for filing claims shall have expired and suitable order shall be included in the decree appointing a receiver requiring such a report. Upon filing such report the receiver shall give due notice of such filing and of the hearing assigned thereon, by mail, or such other notice as may be ordered, to each creditor and other party in interest and shall include in such notice to any creditor a statement as to the disposition recommended by said report of the claim of such creditor.

(g) Failure to Report; Notification of Court. It shall be the duty of the clerk to inform the court of the failure of a temporary receiver or receivers to file such reports as may from time to time be called for by the court either under a rule of court or in the original order or decree of appointment or in any subsequent order or decree. Such failure to so report shall be a matter for investigation and for appropriate action by the court acting upon its own initiative, whether or not complaint is made by any party in interest.

(h) Continuance of Business. The court will order the continuance of the business of a corporation or partnership for which a receiver is appointed only when the complaint or petition contains a prayer to this effect or upon an application in writing by any party in interest and upon cause being shown. Notice to all interested parties of the pendency of a complaint or petition for receivership shall set forth that a continuance of the business is sought in the proceedings.

(i) Allowance of Fees. 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.

(j) Dismissal of Receivership Action. An action in which a receiver has been appointed shall not be dismissed except by order of the court.

(k) Security. Before exercising his or her authority, a receiver shall furnish security in the amount and form directed by the court in the order of appointment.

Gen.Laws 1956, § 7-1.2-1314

§ 7-1.2-1314. Jurisdiction of court to liquidate assets and business of corporation

(a) The superior court has full power to liquidate the assets and business of a corporation:

(1) In an action by a shareholder when it is established that, whether or not the corporate business has been or could be operated at a profit, dissolution would be beneficial to the shareholders because:

(i) The directors or those other individuals that may be responsible for management pursuant to § 7-1.2-1701(a) are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock; or

(ii) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(iii) The shareholders are deadlocked in voting power, and have failed, for a period which includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors; or

- (iv) The corporate assets are being misapplied or are in danger of being wasted or lost; or
 - (v) Two (2) or more factions of shareholders are divided and there is such internal dissension that serious harm to the business and affairs of the corporation is threatened; or
 - (vi) The holders of one-half (1/2) or more of all the outstanding shares of the corporation have voted to dissolve the corporation;
- (2)(i) In an action by a creditor:
- (A) When it is established that the corporation is insolvent; or
 - (B) When it is established that the corporate assets are being misapplied or are in danger of being wasted or lost.
- (ii) If it is established that the claim of a creditor has been reduced to judgment and an execution on the judgment returned unsatisfied or that a corporation has admitted, in writing, that the claim of a creditor is due and owing, the establishment of the facts are prima facie evidence of insolvency.
- (iii) Every petition filed by a creditor for the liquidation of the assets and business of a corporation must contain a statement as to whether the creditor is or is not an officer, director, or shareholder of the corporation. Every petition for the liquidation of the assets and business of a corporation filed by an officer, director, or shareholder of a corporation or by a creditor who is an officer, director or shareholder, must contain, to the best of petitioner's knowledge, information, and belief, the names and addresses of all known creditors of any class of the corporation.
- (3) When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.
- (b) Proceedings under subdivisions (a)(1) or (a)(2) should be brought in the county in which the registered or principal office of the corporation is situated.
- (c) It is not necessary to make shareholders parties to any action or proceeding unless relief is sought against them personally.

Gen.Laws 1956, § 7-1.2-1315

§ 7-1.2-1315. Avoidance of dissolution by share buyout

Whenever a petition for dissolution of a corporation is filed by one or more shareholders (subsequently in this section referred to as the "petitioner") pursuant to either § 7-1.2-1314 or a right to compel dissolution which is authorized under § 7-1.2-1701 or is otherwise valid, one or more of its other shareholders may avoid the dissolution by filing with the court prior to the commencement of the hearing, or, in the discretion of the court, at any time prior to a sale or other disposition of the assets of the corporation, an election to purchase the shares owned by the petitioner at a price equal to their fair value. If the shares are to be purchased by other shareholders, notice must be sent to all shareholders of the corporation other than the petitioner, giving them an opportunity to join in the election to purchase the shares. If the parties are unable to reach an agreement as to the fair value of the shares, the court shall, upon the giving of a bond or other security sufficient to assure to the petitioner payment of the value of the shares, stay the proceeding and determine the value of the shares, in accordance with the procedure set forth in § 7-1.2-1202, as of the close of business on the day on which the petition for dissolution was filed. Upon determining the fair value of the shares, the court shall state in its order directing that the shares be purchased, the purchase price and the time within which the payment is to be made, and may decree any other terms and conditions of sale that it determines to be appropriate,

including payment of the purchase price in installments extending over a period of time, and, if the shares are to be purchased by shareholders, the allocation of shares among shareholders electing to purchase them, which, so far as practicable, are to be proportional to the number of shares previously owned. The petitioner is entitled to interest, at the rate on judgments in civil actions, on the purchase price of the shares from the date of the filing of the election to purchase the shares, and all other rights of the petitioner as owner of the shares terminate on that date. The costs of the proceeding, which include reasonable compensation and expenses of appraisers but not fees and expenses of counsel or of experts retained by a party, will be allocated between or among the parties as the court determines. Upon full payment of the purchase price, under the terms and conditions specified by the court, or at any other time that is ordered by the court, the petitioner shall transfer the shares to the purchaser.

Gen.Laws 1956, § 7-1.2-1316

§ 7-1.2-1316. Procedure in liquidation of corporation by court

(a) In proceedings to liquidate the assets and business of a corporation the court has general equity jurisdiction and power to issue any orders, injunctions, and decrees that justice and equity require, to appoint a receiver or receivers *pendente lite*, with any powers and duties that the court, from time to time, directs, and to take any other proceedings that are requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(b) After a hearing had upon any notice that the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to take charge of any of the corporation's estate and effects of which he or she has been appointed receiver and to collect the assets of the corporation, including all amounts owing to the corporation whether by shareholders on account of any unpaid portion of the consideration for the issuance of shares or otherwise.

(c) The hearing date for the appointment of a permanent receiver is not to be more than twenty-one (21) days after commencement of the action, unless the hearing date is extended by the court for good cause shown.

(d) The liquidating receiver or receivers has authority subject to court order, to sue and defend in all courts in his or her own name as receiver of the corporation, or in its name, to intervene in any action or proceeding relating to its assets or business, to compromise any dispute or controversy, to preserve the assets of the corporation, to carry on its business, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale, to redeem any mortgages, security interests, pledges, or liens of or upon any of its assets, and generally to do all other acts which might be done by the corporation or that is necessary for the administration of his or her trust according to the course of equity. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets will be applied to the expenses of the liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds will distributed under the direction of the court among its shareholders according to their respective rights and interests. The order appointing the receiver or receivers sets forth their powers and duties. The powers and duties may be increased or diminished at any time during the proceeding.

(e) The court has power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment of the

compensation out of the assets of the corporation or the proceeds of any sale or disposition of the assets.

(f) The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated, and of all questions arising in the proceedings concerning the property.

Gen.Laws 1956, § 7-1.2-1317

§ 7-1.2-1317. Bond of receivers

A receiver shall in all cases give any bond that the court directs with any sureties that the court requires.

Gen.Laws 1956, § 7-1.2-1318

§ 7-1.2-1318. Filing of claims in liquidation proceedings

In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the receiver, in any form that the court prescribes, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which is not to be less than four (4) months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that is to be given to creditors and claimants of the fixed date. Prior to the fixed date, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the fixed date may be barred, by court order, from participating in the distribution of the assets of the corporation.

Gen.Laws 1956, § 7-1.2-1319

§ 7-1.2-1319. Discontinuance of liquidation proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In that event the court dismisses the proceedings, it shall direct the receiver to redeliver to the corporation all its remaining property and assets, and shall order any notice to creditors that the court deems proper under the circumstances.

Gen.Laws 1956, § 7-1.2-1320

§ 7-1.2-1320. Decree of involuntary dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, and obligations, all the property and assets have been applied as far as they will go to their payment, the court shall enter a decree dissolving the corporation, at which time the existence of the corporation ceases.

Gen.Laws 1956, § 7-1.2-1321

§ 7-1.2-1321. Filing of decree of dissolution

In case the court enters a decree dissolving a corporation, it is the duty of the clerk of the court to file a certified copy of the decree with the secretary of state. There is no fee charged by the secretary of state for that filing.

Gen.Laws 1956, § 7-1.2-1322

§ 7-1.2-1322. Deposit with state treasury of amount due certain shareholders

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive the distributive portion, will be reduced to cash and deposited with the general treasury and paid over to the creditor or shareholder or to his legal representative upon satisfactory proof to the general treasury of his right to the payment.

Gen.Laws 1956, § 7-1.2-1323

§ 7-1.2-1323. Jurisdiction of court to appoint a receiver

Upon the establishment of any of the grounds for liquidation of the assets and business of

(1) A domestic corporation or

(2) A foreign corporation, to the extent the foreign corporation has assets within the state, stated in § 7-1.2-1314, and upon the establishment that the liquidation would not be appropriate, the superior court has full power to appoint a receiver, with any powers and duties that the court, from time to time, directs, and to take any other proceedings that the court deems advisable under the circumstances. The provisions of §§ 7-1.2-1314 --7-1.2-1322, insofar as they are consistent with the nature of the proceeding, apply to the proceeding, and in the proceeding the court has the full powers of a court of equity to make or enter any orders, injunctions, and decrees and grant any other relief in the proceeding that justice and equity require.

Gen.Laws 1956, § 7-6-60

§ 7-6-60. Jurisdiction of court to liquidate assets and affairs of the corporation

(a) The superior court has full power to liquidate the assets and affairs of a corporation:

(1) In an action by a member or director when it is made to appear:

(i) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened because of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(ii) That the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(iii) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two (2) years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(iv) That the corporate assets are being misapplied or wasted; or

(v) That the corporation is unable to carry out its purposes.

(2) In an action by a creditor:

(i) When the claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied and it is established that the corporation is insolvent; or

(ii) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(4) When the corporation's certificate of incorporation is subject to revocation by the secretary of state and it is established that liquidation of its affairs should precede the issuance of a certificate of revocation.

(b) Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(c) It is not necessary to make directors or members parties to any action or proceedings unless relief is sought against them personally.

Gen.Laws 1956, § 7-6-61

§ 7-6-61. Procedure in liquidation of corporation by court

(a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court directs, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing upon any notice that the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. The liquidating receiver or receivers have authority, subject to court order, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition of the assets shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made for that;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs because of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with the requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court directs;

(4) Any other assets shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

(d) The court has power to allow as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment of the compensation out of the assets of the corporation or the proceeds of any sale or disposition of the assets.

(e) A receiver of a corporation appointed under the provisions of this section has authority to sue and defend in all courts in his or her own name as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

Gen.Laws 1956, § 7-6-62

§ 7-6-62. Qualification of receivers

A receiver shall in all cases be a citizen of the United States or a business corporation authorized to act as receiver, which corporations may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give any bond that the court directs with any sureties that the court requires.

Gen.Laws 1956, § 7-6-63

§ 7-6-63. Filing of claims in liquidation proceedings

In proceedings to liquidate the assets and affairs of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in any form that the court prescribes, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date of not less than four (4) months from the date of the order, as the last day of the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the fixed date. Prior to the fixed date, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the fixed date may be barred, by order of court, from participating in the distribution of the assets of the corporation.

Gen.Laws 1956, § 7-6-64

§ 7-6-64. Discontinuance of liquidation proceedings

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In that event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Gen.Laws 1956, § 7-6-65

§ 7-6-65. Decree of involuntary dissolution

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, at which time the existence of the corporation ceases.

Gen.Laws 1956, § 7-6-66

§ 7-6-66. Filing of decree of dissolution

In case the court enters a decree dissolving a corporation, it is the duty of the clerk of the court to file a certified copy of the decree with the secretary of state. No fee shall be charged by the secretary of state for that filing.

Gen.Laws 1956, § 7-16-40

§ 7-16-40. Judicial dissolution

On application by or on behalf of a member, the superior court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

SOUTH CAROLINA

Code 1976 § 15-65-10

§ 15-65-10. Appointment of receiver.

A receiver may be appointed by a judge of the circuit court, either in or out of court:

- (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;
- (2) After judgment, to carry the judgment into effect;
- (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;
- (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
- (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

Code 1976 § 15-65-20

§ 15-65-20. Notice of appointment shall be given.

No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

Code 1976 § 15-65-30

§ 15-65-30. Notice to nonresident.

When the party whose property is sought to be placed in the hands of a receiver cannot be found within the State, then notice of the application to the party in possession of such property shall be sufficient. And when the property is abandoned and not in possession of anyone and the party claiming the property cannot be found within the State, then the appointment may be made without notice of the application. But whenever a receiver is appointed and the party claiming the property cannot be found within the State, notice of such appointment shall be forthwith given by publication or personal service without the State as prescribed by law in the case of a summons in a civil action.

Code 1976 § 15-65-50

§ 15-65-50. No receiver shall be appointed before judgment when bond is offered.

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.

Code 1976 § 15-65-60

§ 15-65-60. Effect of bond given after appointment; return of property.

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.

Code 1976 § 15-65-70

§ 15-65-70. How bonds shall be made payable; filing.

The several bonds required by this chapter shall be made payable to the clerks of the respective courts in which the action is pending in which the bonds shall be made and shall be conditioned as required by this chapter. They shall, upon execution and approval as to form and sufficiency by the court or judge, or such other officer as the order shall prescribe, be filed in the office of the clerk of court, who shall, upon demand of any party to the cause and payment of the legal fees therefor, give certified copies of such bonds on which any party entitled to the benefit thereof may sue the parties liable thereon in any court of competent jurisdiction.

Code 1976 § 15-65-80

§ 15-65-80. Proceedings when security becomes insufficient.

Should the security become insufficient upon any of such bonds after they have been given and approved, the court or judge may, upon application, after notice, require the security to be made sufficient and on default therein may proceed as if no bond had been given, but without prejudice to the right of any party entitled to the benefit of such bond to enforce it according to the terms and conditions thereof.

Code 1976 § 15-65-90

§ 15-65-90. Charging costs and ascertaining damages if receiver is improperly appointed.

Whenever a receiver shall have been appointed of any property against the opposition of any party to the cause and shall have taken possession of the property and thereafter by any final adjudication such receiver shall be held to have been improperly appointed, the costs, charges and expenses of such receivership shall not be charges upon the property as a whole but only upon the interests therein of the party procuring the appointment. And any party to the cause having opposed such receivership may apply to the court after final adjudication, as aforesaid, and have it referred to a master, referee or jury, as the practice in the case presented may be

proper, to have his actual damages by reason of such receivership ascertained and assessed and for judgment therefor against the party or parties having procured such receiver.

Code 1976 § 15-65-100

§ 15-65-100. Compensation of receivers of corporate property.

Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them.

Code 1976 § 15-65-110

§ 15-65-110. Deposit of money and the like in court.

When it is admitted by the pleading or 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 such money or other thing to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.

Code 1976 § 15-65-120

§ 15-65-120. Enforcing order for deposit.

Whenever, in the exercise of its authority, a court shall have ordered the deposit, delivery or conveyance of money or other property and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff or constable to take the money or property and deposit, deliver or convey it in conformity with the direction of the court.

Code 1976 § 15-65-130

§ 15-65-130. Order for sum admitted due.

When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the court on motion may order such defendant to satisfy that part of the claim and may enforce the order as it enforces a judgment or provisional remedy.

Code 1976 § 18-9-150

§ 18-9-150. Deposit or surety when judgment requires delivery of documents or personalty.

If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Code 1976 § 18-9-170

§ 18-9-170. Staying judgment for sale or delivery of land.

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the

time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

SOUTH DAKOTA

SDCL § 21-21-1

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.

SDCL § 21-21-2

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.

SDCL § 21-21-3

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.

SDCL § 21-21-4

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.

SDCL § 21-21-5

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.

SDCL § 21-21-6

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.

SDCL § 21-21-7

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.

SDCL § 21-21-8

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.

SDCL § 21-21-9

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.

2 SDCL § 21-21-10

1-21-10. 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.

TENNESSEE

T. C. A. § 29-1-103

§ 29-1-103. Receivers and receiverships

The courts are all vested with power to appoint receivers for the safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery.

T. C. A. § 29-1-104

§ 29-1-104. Receivers and receiverships; bonds (officers and fiduciaries)

The clerk and master, when so directed by the order of the judge or chancellor, shall take bond and security from the receiver, or the complainant, conditioned for the faithful discharge of the duties of the receiver.

T. C. A. § 29-6-140

§ 29-6-140. Receivers and receiverships; appointment

The court before whom the suit is pending, may, at any time, appoint a receiver to take possession of property attached under this chapter or chapter 7 of this title, and to collect, manage, and control the same, and pay over the proceeds according to the nature of the property and exigency of the case.

TEXAS

V.T.C.A., Civil Practice & Remedies Code § 64.001

§ 64.001. Availability of Remedy

- (a) A court of competent jurisdiction may appoint a receiver:
- (1) in an action by a vendor to vacate a fraudulent purchase of property;
 - (2) in an action by a creditor to subject any property or fund to his claim;
 - (3) in an action between partners or others jointly owning or interested in any property or fund;
 - (4) in an action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property;
 - (5) for a corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights; or
 - (6) in any other case in which a receiver may be appointed under the rules of equity.
- (b) Under Subsection (a)(1), (2), or (3), the receiver may be appointed on the application of the plaintiff in the action or another party. The party must have a probable interest in or right to the property or fund, and the property or fund must be in danger of being lost, removed, or materially injured.
- (c) Under Subsection (a)(4), 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.
- (d) A court having family law jurisdiction or a probate court located in the county in which a missing person, as defined by [Article 63.001, Code of Criminal Procedure](#), resides or, if the missing person is not a resident of this state, located in the county in which the majority of the property of a missing person's estate is located may, on the court's own motion or on the application of an interested party, appoint a receiver for the missing person if:
- (1) it appears that the estate of the missing person is in danger of injury, loss, or waste; and
 - (2) the estate of the missing person is in need of a representative.

V.T.C.A., Civil Practice & Remedies Code § 64.002

§ 64.002. Persons Not Entitled to Appointment

- (a) A court may not appoint a receiver for a corporation, partnership, or individual on the petition of the same corporation, partnership, or individual.
- (b) A court may appoint a receiver for a corporation on the petition of one or more stockholders of the corporation.
- (c) This section does not prohibit:
- (1) appointment of a receiver for a partnership in an action arising between partners; or
 - (2) appointment of a receiver over all or part of the marital estate in a suit filed under Title 1 or 5, Family Code.

V.T.C.A., Civil Practice & Remedies Code § 64.003

§ 64.003. Foreign Appointment

A court outside this state may not appoint a receiver for:

- (1) a person who resides in this state and for whom appointment of a receiver has been applied for in this state; or

(2) property located in this state.

V.T.C.A., Civil Practice & Remedies Code § 64.004

§ 64.004. Application of Equity Rules

Unless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver.

V.T.C.A., Civil Practice & Remedies Code § 64.021

§ 64.021. Qualifications; Residence Requirement

(a) To be appointed as a receiver for property that is located entirely or partly in this state, a person must:

- (1) be a citizen and qualified voter of this state at the time of appointment; and
 - (2) not be a party, attorney, or other person interested in the action for appointment of a receiver.
- (b) The appointment of a receiver who is disqualified under Subsection (a)(1) is void as to property in this state.
- (c) A receiver must maintain actual residence in this state during the receivership.

V.T.C.A., Civil Practice & Remedies Code § 64.022

§ 64.022. Oath

Before a person assumes the duties of a receiver, he must be sworn to perform the duties faithfully.

V.T.C.A., Civil Practice & Remedies Code § 64.023

§ 64.023. Bond

Before a person assumes the duties of a receiver, he must execute a good and sufficient bond that is:

- (1) approved by the appointing court;
- (2) in an amount fixed by the court; and
- (3) conditioned on faithful discharge of his duties as receiver in the named action and obedience to the orders of the court.

V.T.C.A., Civil Practice & Remedies Code § 64.031

§ 64.031. General Powers and Duties

Subject to the control of the court, a receiver may:

- (1) take charge and keep possession of the property;
- (2) receive rents;
- (3) collect and compromise demands;
- (4) make transfers; and
- (5) perform other acts in regard to the property as authorized by the court.

V.T.C.A., Civil Practice & Remedies Code § 64.032

§ 64.032. Inventory

As soon as possible after appointment, a receiver shall return to the appointing court an inventory of all property received.

V.T.C.A., Civil Practice & Remedies Code § 64.033

§ 64.033. Suits by Receiver

A receiver may bring suits in his official capacity without permission of the appointing court.

V.T.C.A., Civil Practice & Remedies Code § 64.034

§ 64.034. Investments, Loans, and Contributions of Funds

(a) Except as provided by Subsection (b), on an order of the court to which all parties consent, a receiver may invest for interest any funds that he holds.

(b) A receiver appointed for a missing person under [Section 64.001\(d\)](#) who has on hand an amount of money belonging to the missing person in excess of the amount needed for current necessities and expenses may, on order of the court, invest, lend, or contribute all or a part of the excess amount in the manner provided by Subpart L, Part 4, Chapter XIII, Texas Probate Code, for investments, loans, or contributions by guardians. The receiver shall report to the court all transactions involving the excess amount in the manner that reports are required of guardians.

V.T.C.A., Civil Practice & Remedies Code § 64.036

§ 64.036. Receivership Property Held by Financial Institution

Service or delivery of a notice of receivership, or a demand or instruction by or on behalf of a receiver, relating to receivership property held by a financial institution in the name of or on behalf of a customer of the financial institution is governed by Section 59.008, Finance Code.

V.T.C.A., Civil Practice & Remedies Code § 64.051

§ 64.051. Application of Funds; Preferences

(a) A receiver shall apply the earnings of property held in receivership to the payment of the following claims in the order listed:

- (1) court costs of suit;
- (2) wages of employees due by the receiver;
- (3) debts owed for materials and supplies purchased by the receiver for the improvement of the property held as receiver;
- (4) debts due for improvements made during the receivership to the property held as receiver;
- (5) claims and accounts against the receiver on contracts made by the receiver, personal injury claims and claims for stock against the receiver accruing during the receivership, and judgments rendered against the receiver for personal injuries and for stock killed; and
- (6) judgments recovered in suits brought before the receiver was appointed.

(b) Claims listed in this section have a preference lien on the earnings of the property held by the receiver.

(c) The court shall ensure that the earnings are paid in the order of preference listed in this section.

V.T.C.A., Civil Practice & Remedies Code § 64.052

§ 64.052. Suits Against Receiver

(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.

(b) A suit against a receiver may be brought where the person whose property is in receivership resides.

(c) In a suit against a receiver, citation may be served on the receiver or on any agent of the receiver who resides in the county in which the suit is brought.

(d) The discharge of a receiver does not abate a suit against the receiver or affect the right of a party to sue the receiver.

V.T.C.A., Civil Practice & Remedies Code § 64.053

§ 64.053. Payment of Judgment Against Receiver

The court that appointed a receiver shall order any judgment against the receiver to be paid from funds held by the receiver.

V.T.C.A., Civil Practice & Remedies Code § 64.054

§ 64.054. Judgment Lien

A judgment rendered against a receiver in a cause of action arising during the receivership is a lien on all property held by the receiver. The lien is superior to the mortgage lien of a mortgagee who instituted the receivership.

V.T.C.A., Civil Practice & Remedies Code § 64.055

§ 64.055. Execution on Judgment

(a) To obtain payment on a judgment against a receiver, the owner of the judgment may apply to the court that appointed the receiver for an order that the receiver pay the judgment. If the receiver possesses money that is subject to payment of the judgment, but the court refuses to order payment, the owner of the judgment may apply to the court that issued the judgment for execution on the judgment.

(b) The owner of the judgment must file with the court that issued the judgment an affidavit reciting that:

(1) he applied to the court that appointed the receiver for an order of payment;

(2) it was shown to the appointing court that the receiver had money subject to payment of the judgment at that time; and

(3) the appointing court refused to order the receiver to pay the judgment.

(c) The court that issued the judgment shall issue execution that may be levied on any property held by the receiver. The property shall be sold as under ordinary execution, and the sale of the property conveys title to the purchaser.

V.T.C.A., Civil Practice & Remedies Code § 64.056

§ 64.056. Liability of Persons Receiving Receivership Property

(a) A person to whom a receiver delivers property held in receivership, including the owner of the property, a person who receives it for the owner, or an assignee of the owner is liable to the extent of the value of the property for the liabilities of the receiver arising during the receivership that are unpaid at the time of the receiver's discharge. The person receiving the property may be made a defendant to a suit against the receiver, and if judgment is rendered against the receiver, the court shall also render judgment against that defendant.

(b) A judgment against a receiver or an unpaid claim that arose during the receivership and has not been sued on at the date the receiver is discharged constitutes a preference lien on the property held by the receiver on the date of discharge. The lien is superior to the mortgage lien of a mortgagee who instituted the receivership. The person who received the property is liable on the judgment or claim to the extent of the value of the property.

V.T.C.A., Civil Practice & Remedies Code § 64.071

§ 64.071. Venue for Appointment

An action to have a receiver appointed for a corporation with property in this state shall be brought in the county in which the principal office of the corporation is located.

V.T.C.A., Civil Practice & Remedies Code § 64.072

§ 64.072. Limited Duration

(a) Except as provided by this section, a court may not administer a corporation in receivership for more than three years after the date the receiver is appointed, and the court shall wind up the affairs of the corporation within that period.

(b) A court may, from time to time, extend the duration of a corporate receivership if:

(1) litigation prevents the court from winding up the affairs of the corporation within three years; or

(2) the receiver is operating the corporation as a going concern.

(c) To extend the duration of a corporate receivership, the court must have received an application for the extension and, following notice to all attorneys of record, must conduct a hearing on the extension. As required by the best interests of all concerned parties, the court may prescribe conditions for the extension and extend it for a term within the limits provided by Subsection (d). The court shall enter into its minutes the proper order extending the receivership.

(d) A court may not extend a corporate receivership for more than five years beyond the original three years, except that the court may extend for any additional period the receivership of a corporation organized under former Article 3.05(A)(2), Texas Miscellaneous Corporation Laws Act ([Article 1302-3.05, Vernon's Texas Civil Statutes](#)), [Section 2.006, Business Organizations Code](#), before September 1, 2009, or a railroad corporation organized under the Business Organizations Code or former Title 112, Revised Statutes.

V.T.C.A., Civil Practice & Remedies Code § 64.0721

§ 64.0721. Termination of Railroad Receivership

(a) A receiver of a railroad company located wholly within this state that has been in receivership for more than 50 years may apply to the court that appointed the receiver requesting the court to:

(1) terminate the receivership; and

(2) disburse any assets of the railroad company remaining after the payment of the company's debts to one or more nonprofit charitable organizations chosen by the receiver for use in providing services within the county in which the receiver was appointed.

(b) After a receiver makes an application under Subsection (a), the receiver shall publish notice of the proposed termination of the receivership for seven consecutive days in a newspaper of general circulation in the county in which the receivership is located. The notice must state that a person with an interest in the assets of the railroad company may file a claim with the court that appointed the receiver not later than the 90th day after the final day of the publication of the notice.

(c) After the expiration of the period for filing claims provided by Subsection (b) and after the court resolves all claims filed with the court relating to the railroad company, the court shall disburse any remaining assets of the receivership to the nonprofit charitable organizations chosen by the receiver that are acceptable to the court in its discretion.

(d) Any noncash assets of a railroad company that exist when its receivership is terminated under this section escheat to the state.

V.T.C.A., Civil Practice & Remedies Code § 64.073

§ 64.073. Earnings on Improved Property Liable for Debts

(a) A corporation in receivership shall contribute to the payment of any floating debts against it an amount equal to the full value of current earnings spent by the receiver for:

- (1) improvements to the corporate property held by the receiver, the purchase of rolling stock or machinery, and other improvements that increase the value of the property; or
- (2) the extension of a road or the acquisition of land in connection with a road.

(b) If property of a corporation in receivership is sold under court order in a lien foreclosure, the court shall order the clerk to retain from the sale proceeds an amount equal to the value of improvements made by the receiver to the property sold and shall order that money to be paid to persons with a claim, debt, or judgment against the corporation. The courts shall require an amount of cash sufficient for that purpose to be paid in at the date of sale.

V.T.C.A., Civil Practice & Remedies Code § 64.074

§ 64.074. Claims Preference Against Current Earnings

A judgment or claim existing against a corporation at the time the receiver is appointed or a judgment in an action existing at that time shall be paid out of the earnings of the corporation earned during the receivership in preference to the mortgage of a mortgagee who instituted the receivership. The judgment or claim is a lien on those earnings.

V.T.C.A., Civil Practice & Remedies Code § 64.075

§ 64.075. Forfeiture of Charter for Unqualified Receiver

If a person who is not a citizen and qualified voter of this state is appointed receiver for a domestic corporation that owns property in this state, the corporation forfeits its charter. The attorney general shall immediately bring suit in the nature of quo warranto for forfeiture of the charter.

V.T.C.A., Civil Practice & Remedies Code § 64.076

§ 64.076. Suits Against Railroad Receiver: Venue and Service

An action against the receiver of a railroad company may be brought in any county through or into which the railroad is constructed, and citation may be served on the receiver, the general or division superintendent, or an agent of the receiver who resides in the county in which the suit is brought. If no agent of the receiver resides in the county in which the suit is brought, citation may be served on any agent of the receiver in this state.

V.T.C.A., Business Organizations Code § 11.403

§ 11.403. Appointment of Receiver for Specific Property

(a) Subject to Subsection (b), and on the application of a person whose right to or interest in any property or fund or the proceeds from the property or fund is probable, a court that has jurisdiction over specific property of a domestic or foreign entity may appoint a receiver in an action:

- (1) by a vendor to vacate a fraudulent purchase of the property;
- (2) by a creditor to subject the property or fund to the creditor's claim;

- (3) between partners or others jointly owning or interested in the property or fund;
- (4) by a mortgagee of the property for the foreclosure of the mortgage and sale of the property, when:
 - (A) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or
 - (B) it appears that the mortgage is in default and that the property is probably insufficient to discharge the mortgage debt; or
 - (5) in which receivers for specific property have been previously appointed by courts of equity.
- (b) A court may appoint a receiver for the property or fund under Subsection (a) only if:
 - (1) with respect to an action brought under Subsection (a)(1), (2), or (3), it is shown that the property or fund is in danger of being lost, removed, or materially injured;
 - (2) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property or fund and avoid damage to interested parties;
 - (3) all other requirements of law are complied with; and
 - (4) the court determines that other available legal and equitable remedies are inadequate.
- (c) The court appointing a receiver under this section has and shall retain exclusive jurisdiction over the specific property placed in receivership. The court shall determine the rights of the parties in the property or its proceeds.
- (d) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, and the receiver shall redeliver to the domestic entity all of the property remaining in receivership.

V.T.C.A., Business Organizations Code § 11.404

§ 11.404. Appointment of Receiver to Rehabilitate Domestic Entity

- (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under [Section 11.402\(b\)](#) may appoint a receiver for the entity's property and business if:
 - (1) in an action by an owner or member of the domestic entity, it is established that:
 - (A) the entity is insolvent or in imminent danger of insolvency;
 - (B) the governing persons of the entity are deadlocked in the management of the entity's affairs, the owners or members of the entity are unable to break the deadlock, and irreparable injury to the entity is being suffered or is threatened because of the deadlock;
 - (C) the actions of the governing persons of the entity are illegal, oppressive, or fraudulent;
 - (D) the property of the entity is being misapplied or wasted; or
 - (E) with respect to a for-profit corporation, the shareholders of the entity are deadlocked in voting power and have failed, for a period of at least two years, to elect successors to the governing persons of the entity whose terms have expired or would have expired on the election and qualification of their successors;
 - (2) in an action by a creditor of the domestic entity, it is established that:
 - (A) the entity is insolvent, the claim of the creditor has been reduced to judgment, and an execution on the judgment was returned unsatisfied; or
 - (B) the entity is insolvent and has admitted in writing that the claim of the creditor is due and owing; or
 - (3) in an action other than an action described by Subdivision (1) or (2), courts of equity have traditionally appointed a receiver.
- (b) A court may appoint a receiver under Subsection (a) only if:

- (1) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the domestic entity and avoid damage to interested parties;
 - (2) all other requirements of law are complied with; and
 - (3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under [Section 11.402\(a\)](#), are inadequate.
- (c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

V.T.C.A., Business Organizations Code § 11.405

§ 11.405. Appointment of Receiver to Liquidate Domestic Entity; Liquidation

(a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under [Section 11.402\(b\)](#) may order the liquidation of the property and business of the domestic entity and may appoint a receiver to effect the liquidation:

- (1) when an action has been filed by the attorney general under this chapter to terminate the existence of the entity and it is established that liquidation of the entity's business and affairs should precede the entry of a decree of termination;
- (2) on application of the entity to have its liquidation continued under the supervision of the court;
- (3) if the entity is in receivership and the court does not find that any plan presented before the first anniversary of the date the receiver was appointed is feasible for remedying the condition requiring appointment of the receiver;
- (4) on application of a creditor of the entity if it is established that irreparable damage will ensue to the unsecured creditors of the domestic entity as a class, generally, unless there is an immediate liquidation of the property of the domestic entity; or
- (5) on application of a member or director of a nonprofit corporation or cooperative association and it appears the entity is unable to carry out its purposes.

(b) A court may order a liquidation and appoint a receiver under Subsection (a) only if:

- (1) the circumstances demand liquidation to avoid damage to interested persons;
- (2) all other requirements of law are complied with; and
- (3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity and appointment of a receiver to rehabilitate the domestic entity, are inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

TX Rules of Civil Procedure, Rule 695

Rule 695. No Receiver of Immovable Property Appointed Without Notice

Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable. When an application for appointment of a receiver to take possession of property of this type is filed, the judge or court shall set the same

down for hearing and notice of such hearing shall be given to the adverse party by serving notice thereof not less than three days prior to such hearing. If the order finds that the defendant is a non-resident or that his whereabouts is unknown, the notice may be served by affixing the same in a conspicuous manner and place upon the property or if that is impracticable it may be served in such other manner as the court or judge may require.

UTAH

Utah Rules of Civil Procedure, Rule 66

RULE 66. RECEIVERS

- (a) Grounds for appointment. The court may appoint a receiver:
- (a)(1) in any action in which property is in danger of being lost, removed, damaged or is insufficient to satisfy a judgment, order or claim;
 - (a)(2) to carry the judgment into effect, to dispose of property according to the judgment and to preserve property during the pendency of an appeal;
 - (a)(3) when a writ of execution has been returned unsatisfied or when the judgment debtor refuses to apply property in satisfaction of the judgment;
 - (a)(4) when a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights; or
 - (a)(5) in all other cases in which receivers have been appointed by courts of equity.
- (b) Appointment of receiver. 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.
- (c) The court may require security from a receiver in accordance with Rule 64.
- (d) Oath. A receiver shall swear or affirm to perform duties faithfully.
- (e) Powers of receivers. A receiver has, under the direction of the court, power to bring and defend actions, to seize property, to collect, pay and compromise debts, to invest funds, to make transfers and to take other action as the court may authorize.
- (f) Payment of taxes before sale or pledge of personal property. Before the receiver may sell, transfer or pledge personal property, the receiver shall pay applicable taxes and shall file receipts showing payment of taxes. If there are insufficient assets to pay the taxes, the court may authorize the sale, transfer or pledge with the proceeds to be used to pay taxes. Within 10 days after payment, the receiver shall file receipts showing payment of taxes.
- (g) Real property. Before a receiver is vested with real property, the receiver shall file a certified copy of the appointment order in the office of the county recorder of the county in which the real property is located.

Utah Rules of Civil Procedure, Rule 7

RULE 7. PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS

- (a) **Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.
- (b)(1) *Motions.* An application to the court for an order shall be by motion which, unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.
- (b)(2) *Limit on order to show cause.* An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

(e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall be separately identified in the caption of the document containing the request. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or

without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

(f)(3) Unless otherwise directed by the court, all orders shall be prepared as separate documents and shall not incorporate any matter by reference.

VERMONT

Utah Rules of Civil Procedure, Rule 66

RULE 66. RECEIVERS

(a) Grounds for appointment. The court may appoint a receiver:

(a)(1) in any action in which property is in danger of being lost, removed, damaged or is insufficient to satisfy a judgment, order or claim;

(a)(2) to carry the judgment into effect, to dispose of property according to the judgment and to preserve property during the pendency of an appeal;

(a)(3) when a writ of execution has been returned unsatisfied or when the judgment debtor refuses to apply property in satisfaction of the judgment;

(a)(4) when a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights; or

(a)(5) in all other cases in which receivers have been appointed by courts of equity.

(b) Appointment of receiver. 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.

(c) The court may require security from a receiver in accordance with Rule 64.

(d) Oath. A receiver shall swear or affirm to perform duties faithfully.

(e) Powers of receivers. A receiver has, under the direction of the court, power to bring and defend actions, to seize property, to collect, pay and compromise debts, to invest funds, to make transfers and to take other action as the court may authorize.

(f) Payment of taxes before sale or pledge of personal property. Before the receiver may sell, transfer or pledge personal property, the receiver shall pay applicable taxes and shall file receipts showing payment of taxes. If there are insufficient assets to pay the taxes, the court may authorize the sale, transfer or pledge with the proceeds to be used to pay taxes. Within 10 days after payment, the receiver shall file receipts showing payment of taxes.

(g) Real property. Before a receiver is vested with real property, the receiver shall file a certified copy of the appointment order in the office of the county recorder of the county in which the real property is located.

VIRGINIA

VA Code Ann. § 8.01-582

§ 8.01-582. Appointment of general receivers; their duties; audit of funds

Any circuit court may appoint a general receiver of the court, who may be the clerk of the court, and who shall hold his office at its pleasure. The general receiver's duty shall be, unless it is otherwise specially ordered, to receive, take charge of and hold all moneys paid under any judgment, order or decree of the court, and also to pay out or dispose of same as the court orders or decrees. Moneys held pursuant to this section shall be deemed public deposits as set forth in Chapter 44 (§ 2.2-4400 *et seq.*) of Title 2.2 and shall be invested in certificates of deposit or time deposits, and in accordance with the provisions of Chapter 45 (§ 2.2-4500 *et seq.*) of Title 2.2, as ordered by the court. Prior to or at the time of entry of any judgment, order or decree placing moneys under the control of the general receiver for the benefit of any specifically identified beneficiary, the general receiver shall file an affidavit with the court providing the beneficiary's name, date of birth, and social security number, as well as the proposed dates of final and periodic disbursements. Such affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting. Orders creating funds pursuant to this section shall include information necessary to make prudent investment and disbursement decisions but shall not include the personal identifying information set forth in the general receiver's affidavit.

Unless otherwise ordered by the court, the provisions of this section shall not apply to:

1. Cash or other money received in lieu of surety on any bond posted in any civil or criminal case, including but not limited to, bail bonds, appeal bonds in appeals from a district court or circuit court, bonds posted in connection with the filing of an attachment, detinue seizure or distress, suspending bonds, and performance bonds;
2. Cash or other money paid or deposited in the clerk's office prior to final disposition of the case, including but not limited to interpleaders or eminent domain; or
3. Cash or other money deposits in lieu of surety on any bond posted in the clerk's office which is not posted in connection with any civil or criminal case, including bonds posted by executors or administrators.

To this end, the general receiver is authorized to verify, receive, and give acquittances for all such moneys, as the court may direct. Any interest which accrues on the funds, minus allowable fees and bond costs, shall be credited and payable to the person or persons entitled to receive such funds.

All moneys received under this section are subject to audit by the Auditor of Public Accounts. The Auditor of Public Accounts shall prescribe mandatory record keeping and accounting standards for general receivers.

VA Code Ann. § 8.01-583

§ 8.01-583. How securities taken and kept; power of receivers over same

The securities in which under the orders of the court such investments may be made shall be taken in the name of the general receiver and be kept by him, unless otherwise specially ordered. He shall have power to sell, transfer or collect the same, only upon order of the court; and in case of his death, resignation or removal his successor, or any person specially appointed by the court for that purpose, shall have like power.

Notwithstanding the foregoing paragraph, when a general receiver places funds in a security or investment which is insured by the Federal Deposit Insurance Corporation or other federal insurance agency, the general receiver shall to the extent practicable invest these funds so that insurance coverage is provided by the Federal Deposit Insurance Corporation or other federal insurance agency.

VA Code Ann. § 8.01-584

§ 8.01-584. How dividends and interest collected and invested

The general receiver shall collect the dividends and interest on all the securities in which investments have been or may be made, under the orders or decrees of his court, or under the provisions of § 8.01-582, when and as often as the same may become due and payable thereon, and shall invest the same in like securities, unless the court has ordered or decreed some other investment or disposition to be made thereof; and in such case he shall invest or dispose of the same as the court shall have ordered or decreed.

VA Code Ann. § 8.01-585

§ 8.01-585. How accounts kept by receivers

Each such general receiver shall keep an accurate and particular account of all moneys received, invested and paid out by him, showing the respective amounts to the credit of each case in the court and designating in the items the judgments, orders or decrees of court under which the respective sums have been received, invested or paid out. No later than October 1 of each year, he shall make a report to his court showing the balance to the credit of each case in the court in which money has been received by him, the manner of each case in the court in which money has been received by him, the manner in which it is invested, the amounts received, invested or paid out during the year ending June 30 of the current year, the approximate date on which the moneys held for the beneficiaries will become payable, and the whole amount then invested and subject to the future order of the court. A copy of the annual report shall be recorded in the trust fund order book. He shall, at any time when required by the court or the Auditor of Public Accounts so to do, furnish a statement of the amount subject to the order of the court in any case pending therein and any other information required by the court or the Auditor of Public Accounts as to any money or other property under his control. He shall annually make formal settlement of his accounts before the court or before the commissioner mentioned in § 8.01-617 which settlement shall be recorded as provided in § 8.01-619.

VA Code Ann. § 8.01-586

§ 8.01-586. Inquiry as to unknown owners of funds

When funds are held because of inability to find the person to whom payable, such receiver may be ordered by the court to make inquiry and due diligence to ascertain such person in order that payment may be made; and for this purpose, and to secure any other relevant information, he shall have power to summon witnesses and take evidence; and he shall report specifically to the court in each annual report, and at any other time when so ordered by the court, the details and results of his efforts.

VA Code Ann. § 8.01-587

§ 8.01-587. Liability of general receivers

Except as otherwise ordered by the court, for good cause shown, a general receiver shall be liable for any loss of income which results from his (i) failure to invest any money held by him pursuant to §§ 8.01-582 through 8.01-586 within sixty days of his receipt of the funds or (ii) failure to pay out any money so ordered by the court within sixty days of the court order. He shall be charged with interest from the date of the court order until such investment or payment is made.

VA Code Ann. § 8.01-588

§ 8.01-588. Bonds generally

A general receiver shall annually give before the court a bond with surety to be approved by it, in such penalty as the court directs, sufficient at least to cover the probable amount under his control in any one year.

This section shall apply to the clerk if the clerk is appointed such receiver, and his official bond as clerk shall not cover money or property under his control as general receiver.

VA Code Ann. § 8.01-588.1

§ 8.01-588.1. Bonds apportioned to funds under control; annual reports

The general receiver shall obtain bond through the Department of the Treasury's Division of Risk Management. No later than October 1 of each year, he shall report to the Division the amount of moneys under his control pursuant to § 8.01-582 as of June 30 of the current year and shall report the amount he expects to come under his control for the year ending on June 30 of the following year. He shall also report any other information reasonably required by the Division concerning bond coverage of moneys under his control. The cost of the bond shall be apportioned among the funds under his control as of the billing date based on the amount of each owner's or beneficiary's moneys. This section shall not apply to any financial institution fulfilling the requirements set out in § 6.2-1003 or § 6.2-1085.

VA Code Ann. § 8.01-5889

§ 8.01-589. Compensation and fees; when none allowed

A. A general receiver may receive as compensation for his services such amount as the court deems reasonable, but not exceeding:

1. Ten dollars at receipt of the originating court order to receive funds, deposit funds, and establish files and accounting records with respect to those funds;
2. Ten dollars when all funds held for a beneficiary or beneficiaries are disbursed;
3. Ten dollars per draft or check for periodic and final disbursements;
4. Five percent of the interest income earned; and
5. Ten dollars for remitting funds to the State Treasurer and up to ten dollars per draft for remitting those funds.

B. Notwithstanding the foregoing subsections, general receivers shall not deduct fees or otherwise be compensated for services with respect to those funds which should have been reported and then remitted to the State Treasurer in accordance with § 8.01-602 or § 55-210.9:1.

A general receiver shall promptly report to the court the execution of the bond or bonds required in § 8.01-588 and make the reports and perform the duties required of him. No compensation shall be allowed him until he has performed the duties aforesaid.

If such receiver is the clerk of court and if compensation is allowed, it shall be fee and commission income to the office of such clerk in accordance with § 17.1-287.

VA Code Ann. § 8.01-590

§ 8.01-590. Penalty for failure of duty

If a general receiver fail to keep the account, or to make out and return the statements required by § 8.01-585, he shall be subject to a fine of not less than \$100 nor more than \$1,000 to be imposed by the court at its discretion; and the condition of his official bond shall be taken to embrace the liability of himself and his sureties for any such fine.

VA Code Ann. § 8.01-591

§ 8.01-591. Notice required prior to appointment of receiver

Whenever the pleadings in any suit make out a proper case for the appointment of a receiver and application is made therefor to any court, such court shall designate the time and place for hearing such application, and shall require reasonable notice thereof to be given to the defendant and to all other parties having a substantial interest, either as owners of or lienors of record and lienors known to the plaintiff, in the subject matter. The court to whom such application is made shall inquire particularly of the applicant as to the parties so substantially interested in the subject matter, and such applicant, for any intentional or wilful failure to disclose fully all material information relating to such inquiry, may be adjudged in contempt of court.

VA Code Ann. § 8.01-592

§ 8.01-592. Notice not required in emergencies

Section 8.01-591 shall not apply to those cases in which an emergency exists and it is necessary that a receiver be immediately appointed to preserve the subject matter. In such emergency cases a receiver may be appointed and the order of appointment shall state the emergency and necessity for immediate action, and shall require bond in proper amount of the applicant or someone for him with sufficient surety conditioned to protect and save harmless the owners, lienors and creditors, lien or general, in the subject matter taken over by the receiver, from all damages and injury properly and naturally flowing from such emergency appointment of a receiver.

VA Code Ann. § 8.01-593

§ 8.01-593. Subsequent proceedings after emergency appointment

Such emergency appointment shall be limited to a period of not longer than thirty days, during which period notice shall be given by the applicant to all parties having a substantial interest, either as owner of or lienor in the subject matter, of any motion to extend such receivership; and upon the hearing on such motion, the court shall hear the matter de novo, and shall discharge such receiver, or shall appoint the same receiver, or other receivers to act with him, or new receivers as to the court may seem right. Unless such receivership shall be so extended, all the rights and powers of such emergency receiver over the subject matter, at the end of such period for which he shall have been appointed, shall cease and determine, and such receiver shall forthwith file with such court an account of his dealing with such estate. The notices required to be given under this section and §§ 8.01-591 and 8.01-592 shall be served, as to residents of this Commonwealth, in any of the modes prescribed by § 8.01-296, and as to nonresidents of this Commonwealth, or persons unknown, or in any case in which the number of persons to be given notice exceeds thirty, in the manner prescribed by § 8.01-319.

VA Code Ann. § 8.01-594

§ 8.01-594. Notice not required to parties served with process

In any suit matured and docketed in which the bill or petition prays for the appointment of a receiver, no notice shall be required under this article to be given to any defendant upon whom process to answer such bill or petition shall have been served.

VA Code Ann. § 8.01-595

8.01-595. Preparation of list of creditors; notice to them

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.

When a permanent receiver is appointed he shall not be required to make a new list of creditors if a temporary receiver or a prior receiver appointed in the same proceedings has already prepared one which is adequate, nor shall he be required to mail other notices to creditors if the prior receiver has given proper notice to the parties entitled thereto.

VA Code Ann. § 8.01-596

§ 8.01-596. No sale prior to such notification; exceptions

No court shall order the sale of any assets of the receivership until a receiver has reported to the court in writing that he has mailed such notices to such creditors at least five days prior to the filing of such report, except that the court may at any time permit the sale of perishable or seasonable goods when necessary to preserve the estate, or may permit the receiver to conduct the business for which he is a receiver as a going business and to sell in the usual course of such business.

VA Code Ann. § 8.01-597

§ 8.01-597. Suits against receivers in certain cases

Any receiver of any property appointed by the courts of this Commonwealth may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver was appointed; but the institution or pendency of such suit shall not interfere with or delay a sale by trustees under a deed of trust or a decree of sale for foreclosure of any mortgage upon such property.

VA Code Ann. § 8.01-598

§ 8.01-598. Effect of judgment against receiver

A judgment against a receiver under § 8.01-597 shall not be a lien on the property or funds under the control of the court, nor shall any execution issue thereon, but upon filing a certified copy of such judgment in the cause in which the receiver was appointed, the court shall direct payment of such judgment in the same manner as if the claim upon which the judgment is based had been proved and allowed in such cause.

VA Code Ann. § 8.01-599

§ 8.01-599. Warrant or motion for judgment against receiver in general district court, when to be tried

A warrant or motion for judgment before a general district court under §§ 8.01-597 and 8.01-598 may be tried not less than ten days after service of process.

VA Code Ann. § 8.01-600

§ 8.01-600. How money under control of court deposited; record kept; liability of clerk

A. This section pertains only to money held by the clerk of the circuit court, when the court orders moneys to be held by the clerk pursuant to this section. The clerk shall have the duty, unless it is otherwise specially ordered, to receive, take charge of, hold or invest in such manner as the court orders and also to pay out or dispose of these moneys as the court orders or decrees. To this end, the clerk is authorized to verify, receive, and give acquittances for all such moneys as the court may direct.

B. Orders creating funds pursuant to this section or § 8.01-582 shall include information necessary to make prudent investment and disbursement decisions. The orders shall include, except when it is unreasonable, the proposed dates of periodic and final disbursements. Prior to the entry of the order, the beneficiary or his representative shall file an affidavit with the court providing the beneficiary's name, date of birth, address and social security number. The affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting.

Unless otherwise ordered by the court, the provisions of this section shall not apply to:

1. Cash or other money received in lieu of surety on any bond posted in any civil or criminal case, including but not limited to bail bonds, appeal bonds in appeals from a district court or circuit court, bonds posted in connection with the filing of an attachment, detinue seizure or distress, suspending bonds, and performance bonds;
2. Cash or other money paid or deposited in the clerk's office prior to final disposition of the case, including but not limited to interpleaders or eminent domain; or
3. Cash or other money deposited in lieu of surety on any bond posted in the clerk's office which is not posted in connection with any civil or criminal case, including bonds posted by executors or administrators.

C. All deposits under this section shall be secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

D. Moneys held pursuant to this section shall be invested in certificates of deposit and time deposits, and in accordance with the provisions of Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 as ordered by the court.

E. Any interest which accrues on the funds, minus allowable fees and bond costs, shall be credited and payable to the person or persons entitled to receive such funds. The court may order the clerk to consolidate for investment purposes money received under this section, with income received hereunder to be apportioned among the several accounts.

F. Except as otherwise ordered by the court, for good cause shown, the clerk shall be liable for any loss of income which results from his (i) failure to invest the money within sixty days of the court order creating the fund or (ii) failure to pay out any money so ordered by the court within sixty days of the court order. He shall be charged with interest from the date of the court order until such investment or payment is made.

G. The clerk shall keep an accurate and particular account of all moneys received, invested, and paid out by him, showing the respective amounts to the credit of each case in the court and designating in the items the judgments, orders or decrees of court under which the respective sums have been received, invested or paid out. At least annually and no later than October 1 of each year, the clerk shall make a report to the court showing the balance to the credit of each case in the court in which money has been received by him, the manner in which money has been received by him, the manner in which it is invested, the amounts received, invested or paid out during the year ending June 30 of the current year, the approximate date on which the moneys held for the beneficiaries will become payable, and the whole amount then invested and subject to the future order of the court. A copy of this report shall be recorded in the trust fund order book. The clerk shall, at any time when required by the court or the Auditor of Public Accounts to do so, furnish a statement of the amount subject to the order of the court in any case pending therein and any other information required by the court or the Auditor of Public Accounts as to any money or other property under his control before the court. When the clerk receives funds under this section, he shall be entitled to receive fees in accordance with § 17.1-287 in the amounts as specified for general receivers in § 8.01-589.

H. All moneys received under this section are subject to audit by the Auditor of Public Accounts.

VA Code Ann. § 8.01-601

§ 8.01-601. Deposit with general receiver of certain funds under supervision of fiduciary and belonging to person under disability

Whenever it appears to any fiduciary as defined in § 8.01-2 that a person under a disability as defined in § 8.01-2 is not represented by a fiduciary as defined above and is entitled to funds not exceeding \$3,000 under the supervision and control of the fiduciary in charge of such funds, he may report such fact to the commissioner of accounts of the court in which he was admitted to qualify. With the approval of such commissioner of accounts, the fiduciary in charge of such funds may deposit such funds with the general receiver of the court in which he was admitted to qualify. The general receiver shall issue a receipt to such fiduciary which shall show the source of such fund, the amount and to whom it belongs and shall enter the amount and such facts in his accounts.

VA Code Ann. § 8.01-607

§ 8.01-607. Appointment and removal

A. Each circuit court may, from time to time, appoint such commissioners in chancery as may be deemed necessary for the convenient dispatch of the business of such court. Such commissioners shall be removable at pleasure.

B. Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when:

1. There is agreement by the parties with the concurrence of the court; or
2. Upon (i) motion of a party, or (ii) upon motion of the court, sua sponte. The court shall make a finding of good cause shown in each individual case.

VA Code Ann. § 8.01-608

§ 8.01-608. How accounts referred

Accounts to be taken in any case shall be referred to a commissioner appointed pursuant to § 8.01-607, unless the parties interested agree, or the court shall deem it proper, that they be referred to some other person.

VA Code Ann. § 8.01-609

§ 8.01-609. Duties; procedure generally

Every commissioner shall examine, and report upon, any matters as may be referred to him by any court. The proceedings before a commissioner in chancery shall be conducted as set forth in this chapter and the Rules of Court.

VA Code Ann. § 8.01-609.1

§ 8.01-609.1. Commissioners in chancery

A commissioner in chancery may, for services rendered by virtue of his office, charge the following fees, to wit:

For services which might be performed by notaries, the fees for such services and for any other service such fees as the court by which the commissioner is appointed may from time to time prescribe.

A commissioner shall not be compelled to make out or return a report until his fees therefor are paid or security given him to pay so much as may be adjudged appropriate by the court to which the report is to be returned or by the judge thereof in vacation, unless the court finds cause to order it to be made out and returned without such payment or security.

VA Code Ann. § 8.01-610

§ 8.01-610. Weight to be given commissioner's report

The report of a commissioner in chancery shall not have the weight given to the verdict of a jury on conflicting evidence, but the court shall confirm or reject such report in whole or in part, according to the view which it entertains of the law and the evidence.

VA Code Ann. § 8.01-611

§ 8.01-611. Notice of time and place of taking account

The court, ordering an account to be taken, may direct that notice of the time and place of taking it be published once a week for two successive weeks in a newspaper meeting the requirements of § 8.01-324, and may also require notice to be served on the parties in the manner set forth in the Rules of Court for the taking of depositions.

VA Code Ann. § 8.01-612

§ 8.01-612. Commissioner may summons witnesses

A commissioner in chancery, to whom has been referred any matter, may compel the attendance of all needed witnesses by summons. A summonsed witness who fails to attend shall be reported to the court for appropriate contempt proceedings.

VA Code Ann. § 8.01-613

§ 8.01-613. Commissioner may ask instructions of court

A commissioner, who has doubts as to any point which arises before him, may, in writing, submit the point to the court, who may instruct him thereon.

VA Code Ann. § 8.01-614

§ 8.01-614. His power to adjourn his proceedings

A commissioner in chancery may adjourn his proceedings from time to time, after the day to which notice was given, without any new notice, until his report is completed; and, when it is completed, it may be filed in the clerk's office at any time thereafter. The commissioner may, if it shall appear to him necessary, adjourn such proceedings, to any place within the Commonwealth, and there continue such proceedings and take depositions and other evidence in like manner and with like force and effect as if the same were done in the place where he was appointed, and the commissioner shall have the power to compel the attendance of witnesses before him in the manner prescribed by § 8.01-612.

VA Code Ann. § 8.01-615

§ 8.01-615. When cause heard on report; time for filing exceptions

A cause may be heard by the court upon a commissioner's report. Subject to the Rules of Court regarding dispensing with notice of taking proofs and other proceedings, reasonable notice of such hearing shall be given to counsel of record and to parties not represented by counsel. Exceptions to the commissioner's report shall be filed within ten days after the report has been filed with the court, or for good cause shown, at a later time specified by the court.

This section shall not apply to the report of a commissioner appointed to sell property; in such cases the report of such commissioner, when filed in the clerk's office, shall be either confirmed, modified, or rejected forthwith.

VA Code Ann. § 8.01-616

§ 8.01-616. Delivery of original papers of suit by clerk to commissioner

The clerk of a court shall, upon the request of any commissioner in chancery who has before him for execution an order made in such action, deliver to him the original papers thereof; and it shall not be necessary for the clerk to copy such papers, nor shall he charge any fee for copies of any of them, unless the same be specially ordered. The commissioner to whom such papers may be delivered, shall give his receipt therefor, and return the papers as speedily as possible to the office of the clerk of the court.

VA Code Ann. § 8.01-617

§ 8.01-617. Settlement of accounts of special receivers and special commissioners

Every circuit court, by an order entered of record, shall appoint one of its commissioners in chancery, who shall hold office at its pleasure, to state and settle the accounts of all special receivers and of all special commissioners holding funds or evidences of debt subject to the order of the court.

All special receivers and special commissioners shall, unless their accounts have been previously verified and approved by the court, and ordered to be recorded, with reasonable promptness, and not longer than four months after any money in their hands should be distributed or at other intervals specified by the court, present to such commissioner in chancery an accurate statement of all receipts and disbursements, duly signed and supported by proper vouchers; and the commissioner in chancery shall examine and verify the same, and attach his certificate thereto approving it, if it is correct, or stating any errors or inaccuracies therein, and file same in the cause in which the special receiver or special commissioner was appointed, and present the same to the court.

The court may at any time appoint any of its other commissioners in chancery to perform the duties herein required in any case in which the regular commissioner in chancery appointed hereunder is himself the special receiver or special commissioner whose accounts are to be settled.

For his services performed hereunder the commissioner in chancery shall receive such compensation as the court allows, to be paid out of the fund in the hands of the special receiver or special commissioner.

If any special receiver or special commissioner fails to make settlement as herein required within the time herein provided, he shall forfeit his compensation, or so much thereof as the court orders.

The court may order its general receiver also to state and settle his accounts in the manner herein provided. When a general receiver settles his accounts before a commissioner of accounts or commissioner in chancery, fees charged by the commissioner are to be reasonable but may not exceed \$100 per general receiver settlement or \$1 per disbursement made by the general receiver as reflected in the settlement, whichever is greater.

WASHINGTON

West's RCWA 7.60.005

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.

West's RCWA 7.60.015

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.

West's RCWA 7.60.025

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.

West's RCWA 7.60.035

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.

West's RCWA 7.60.045

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.

West's RCWA 7.60.055

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.

West's RCWA 7.60.060

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. Sec. 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.

West's RCWA 7.60.070

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.

West's RCWA 7.60.080

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
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3. List all consumer deposits owed, showing:

Name	Address	Amount	Whether or not disputed
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4. List all taxes owed, showing:

(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.

West's RCWA 7.60.100

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.

West's RCWA 7.60.110

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.

West's RCWA 7.60.130

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.

West's RCWA 7.60.140

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.

West's RCWA 7.60.150

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.

West's RCWA 7.60.160

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.

West's RCWA 7.60.170

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.

West's RCWA 7.60.180

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.

West's RCWA 7.60.190

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.

West's RCWA 7.60.200

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.

West's RCWA 7.60.210

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.

West's RCWA 7.60.220

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.

West's RCWA 7.60.230

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.

West's RCWA 7.60.240

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.

West's RCWA 7.60.250

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.

West's RCWA 7.60.260

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.

West's RCWA 7.60.270

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.

West's RCWA 7.60.280

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.

West's RCWA 7.60.290

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.

West's RCWA 7.60.300

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.

WEST VIRGINIA

W. Va. Code, § 53-6-1

§ 53-6-1. Special receiver--Appointment generally; bond; notice of application for appointment

A court of equity may, in any proper case pending therein, in which funds or property of a corporation, firm or person is involved, and there is danger of the loss or misappropriation of the same or a material part thereof, appoint a special receiver of such funds or property, or of the rents, issues and profits thereof, or both, who shall give bond with good security to be approved by the court, or by the clerk thereof, for the faithful performance of his trust, and for paying over and accounting for, according to law, all such moneys that may come into his hands by virtue of his appointment. But 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. A judge of such court in vacation may appoint such receiver of any such property, except real estate, and the rents, issues and profits thereof.

W. Va. Code, § 53-6-2

§ 53-6-2. Same--Appointment by order of supreme court of appeals or judge thereof in vacation

When a circuit court, or judge thereof, shall refuse the appointment of a receiver as aforesaid, a copy of the orders entered in the proceedings in court, and the original papers presented to it, or the judge in vacation, with the order of refusal, may be presented to the supreme court of appeals, or a judge thereof in vacation, who may thereupon order the appointment to be made, and cause such order to be certified to the clerk of such circuit court, who shall record the same in his chancery order book, whereupon it shall be the duty of such circuit court or judge to appoint such receiver, and require the bond as hereinbefore provided.

W. Va. Code, § 53-6-3

§ 53-6-3. Same--Accounting

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 wherein the cause in which he is receiver is pending, or by the judge thereof in vacation. Such accounting shall be before such court or judge, or before any commissioner in chancery of such court directed by such court or judge to take and state such account, and shall constitute a part of the proceedings in such cause.

WISCONSIN

W.S.A. 128.08

128.08. Receiver; custodian

(1) The court within the proper county may sequester the property of a debtor and appoint a receiver therefor:

- (a) When an execution against a judgment debtor is returned unsatisfied in whole or in part.
- (b) When a corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights.

(2) Upon application duly made, the court shall appoint as receiver the person nominated by the petitioning creditor or creditors, subject to [s. 128.10](#).

W.S.A. 813.16

813.16. Receivers

A receiver may be appointed:

(1) On the application of either party, when the applying party establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired.

(2) By the judgment, or after judgment, to carry it into effect or to dispose of the property according to the judgment.

(3) To preserve the property during the pendency of an appeal; or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment or in an action by a creditor under ch. 816.

(4) When a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

(5) In accordance with the practice which obtained when the code of 1856 took effect except as otherwise provided in this chapter.

(6) The receiver shall give to and file with the clerk of the court a bond, conditioned in the usual manner, with sureties to be approved by the judge making the appointment sufficient to cover all property likely to come into the receiver's hands.

(7) If the person seeking the appointment of a receiver under sub. (1) 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.

W.S.A. 813.17

813.17. Receiver; payment of employees' wages

Whenever a receiver shall be appointed to manage or close up any business, the receiver shall immediately report to the court the amount due the employees in such business; and said court shall order the receiver to pay out of the first receipts of said business, after the payment of costs, debts due the United States or this state, taxes and assessments and the current expenses of carrying on or closing said business, the wages, including pension, welfare and vacation benefits, of such employees earned during the last 3 months of employment and within one year prior to the receiver's appointment.

W.S.A. 813.23

813.23. Receiver may be appointed when

(1)(a) When a person domiciled in this state and having an interest in any form of property disappears and is absent from the person's place of residence without being heard of after diligent inquiry, upon application for a finding of such disappearance and absence and of the necessity for the appointment of a receiver to the circuit court of the county of the absentee's domicile by any person who would have an interest in said property were said absentee deceased or by an insurer or surety or creditor of such absentee, after notice as provided in s. 813.24, and upon good cause being shown, the court may find that the absentee was last heard of as of a date certain and may appoint a receiver to take charge of the absentee's estate. The absentee shall be made a party to said proceeding; and any other person who would have an interest in said property were said absentee deceased, upon direction by the court, may be made a party to said proceeding.

(b) When a person is a member of the armed forces of the United States without this state, or is serving as a merchant seaman outside of the limits of the United States included within the 50 states and the District of Columbia, or is outside such limits by permission, assignment or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged, and has an interest in any form of property in this state and no adequate power of attorney on his or her behalf has been recorded in the office of the register of deeds of the county of his or her domicile or of the county where such property is situated, upon application for findings establishing the foregoing and the necessity for appointment of a receiver, to the circuit court of the county of such person's domicile or of the county where such property is situated, by any person who would have an interest in said property were such person deceased, or by an insurer or surety or creditor of such person, or by any other person or on the court's own motion, after notice as provided in s. 813.24, and upon good cause being shown, the court may, on making such findings, appoint a receiver to take charge of such person's estate. Such person should be made a party to such proceedings; and any other person who would have an interest in said property were said person deceased, upon direction by the court, may be made a party to said proceedings. Such person shall be deemed an "absentee" within the meaning of ss. 813.23 to 813.34.

(2)(a) The receiver, upon giving bond to be fixed in amount and with surety to be approved by the court and upon such conditions as will insure the conservation of such property, shall under the direction of said court administer said property as an equity receivership with power:

1. To take possession of all property of the absentee wherever situated.
2. To collect all debts due the absentee.
3. To bring and defend suits.
4. To pay insurance premiums.
5. With the approval of the court in each case, to pay all debts due by the absentee.
6. To pay over the proceeds of such part or all of said property, or the income thereof as may be necessary for the maintenance and support of the absentee's dependents.

(b) If the personal property of the absentee is not sufficient to pay all of the absentee's debts, and to provide for the maintenance and support of the absentee's dependents, the receiver may apply to the court for an order to sell or mortgage so much of the real estate as may be necessary therefor; said sale or mortgage to be reported to, approved and confirmed by the court and said

receiver to be ordered to make deed conveying or mortgaging said real property to the purchaser or lender upon the purchaser's or lender's complying with the terms of sale or mortgage.

(3) Upon the filing of the application referred to in sub. (1), the court may for cause shown appoint a temporary receiver to take charge of the property of the absentee and conserve it pending hearing upon the application. Such temporary receiver shall qualify by giving bond in an amount and with surety to be approved by the court and shall exercise only the powers named by the court. Should a permanent receiver be appointed, the temporary receiver shall turn over all property in the temporary receiver's possession, less such as may be necessary to cover the temporary receiver's expenses and compensation as allowed by the court, to the permanent receiver, shall file the temporary receiver's final account and upon its approval be discharged. Should the application for permanent receiver be denied, the temporary receiver shall restore to those from whom it may have been obtained, all property in the temporary receiver's possession, less such only as may be necessary to cover the temporary receiver's expenses and compensation as allowed by the court, shall file the temporary receiver's final account and be discharged. Where the application is denied, the expenses of the temporary receivership and the compensation of the temporary receiver may in the discretion of the court be taxed as costs of the proceeding to be paid by the applicant and shall be enforceable by the temporary receiver against the applicant.

W.S.A. 813.24

813.24. Notice

All notices required under ss. 813.22 to 813.34 shall be served upon all parties ordered by the court to be served as prescribed by statutes or rules, except that in addition thereto service on the absentee shall be by a class 3 notice, under ch. 985, in the county of the absentee's domicile, the last insertion to be not less than 10 nor more than 20 days prior to the time set for any hearing. The original notice prescribed in s. 813.23(1) shall require each person claiming an interest in the property of the absentee to file in court within a time fixed by the court a statement of the nature and extent of such interest. In relation to a person in military service similar notice shall be given; except that where it appears to the court that such person was not domiciled in this state immediately prior to such service, publication of the notice may be made in the county where property of such person is situated.

W.S.A. 813.25

813.25. Search for absentee

(1) The court, upon application, may direct the receiver to make search for the absentee in any manner which the court may deem advisable, including any or all of the following methods:

- (a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the absentee's whereabouts;
- (b) By notifying officers of justice and public welfare agencies in appropriate locations of the absentee's disappearance;
- (c) By engaging the services of an investigation agency.

(2) The expenses of such search and of the notices provided for in s. 813.24 shall be taxed as costs and paid out of property of the absentee.

W.S.A. 813.26

813.26. Final hearing and finding

(1) At any time, during the proceedings, upon application to the court and presentation of satisfactory evidence of the absentee's death, the court may make a final finding and decree that the absentee is dead; in which event the decree and a transcript of all of the receivership proceedings shall be certified to the proper court for any administration required by law upon the estate of a decedent, and the receivership court shall proceed no further except for the purposes set forth in s. 813.28(1) and (3).

(2) After the lapse of 5 years from the date of the finding provided for in s. 813.23(1), if the absentee has not appeared, the court may proceed to take further evidence and thereafter make a final finding and enter a decree declaring that all interest of the absentee in the absentee's property has ceased and devolved upon others by reason of the absentee's failure to appear and make claim.

(3) At any time, upon proof to the court that a power of attorney has been recorded as provided by s. 813.23(1)(b), the court shall direct termination of the receivership proceedings and transfer of property held thereunder to the person in military service or to the attorney named in such power of attorney upon payment of reasonable expenses and compensation of the receiver in the discretion of the court.

W.S.A. 813.27

813.27. Claim of absentee barred

No action shall be brought by an absentee to recover any portion of this property after the final finding and judgment provided for in s. 813.26.

W.S.A. 813.28

813.28. Termination of receivership and disposition of property of absentee

Upon the entry of any final finding and decree as provided in s. 813.26, the court shall proceed to wind up the receivership and terminate the proceedings:

(1) In the case of a finding under s. 813.26(1) that the absentee is dead:

- (a) By satisfying all outstanding debts and charges of the receivership; and
- (b) By then certifying the proceedings to the proper court; or

(2) In the case of a finding under s. 813.26(2):

- (a) By satisfying all outstanding debts and charges;
- (b) By then deducting for the insurance fund provided in s. 813.31 a sum equal to 5 percent of the total value of the property remaining, including amounts paid to the receivership estate from policies of insurance on the absentee's life;
- (c) By distributing the remaining property as provided in s. 813.29; and

(3) In both cases by requiring the receiver's account and upon its approval discharging the receiver and the receiver's bondsmen and entering a final decree terminating the receivership.

W.S.A. 813.29

813.29. Distribution of property of absentee

The property remaining for distribution in accordance with s. 813.28(2)(c) shall be distributed among those persons who would be entitled thereto under the laws of descent and distribution of this state had the absentee died intestate as of the date determined by the court in its final finding and decree; or in case the absentee leaves a document which, had the absentee died, would under the laws of this state be entitled to probate as the absentee's will, the distribution shall be according to the terms of that document as of that date. The validity and effect of the distribution

of said property shall be determined by the court administering the receivership and shall be final and binding upon all persons including the absentee.

W.S.A. 813.30

813.30. Insurance policies

(1) At the time of the distribution under s. 813.29, the court may direct the payment to the beneficiaries of any sums due and unpaid under any policies of insurance upon the life of the absentee, if the claim is uncontested by the insurer.

(2) If the claim is contested, the court shall take jurisdiction of the action and shall submit to a jury, if one be called for, the issue of death of the insured and any other issues arising under the policy.

(3) Where the survival of a named beneficiary is not established, ss. 813.22 to 813.34 shall apply as if the proceeds of the insurance were a part of the estate of the absentee.

(4) If in any proceeding under subs. (1) and (2) the absentee is not found to be deceased and the policy provides for a surrender value, the beneficiary may request the receiver, acting for the insured, to demand the payment of surrender value. The receiver's receipt for such payment shall be a release to the insurer of all claims under the policy. The receiver shall pay over to the beneficiary, if the beneficiary survives the insured, otherwise to the estate of the absentee, the sum thus received, reserving only an amount allowed by the court as costs of the proceedings under this section.

(5) Payment by an insurer hereunder shall be in full discharge of all contractual liability. No action shall be brought by an absentee to recover any portion of the proceeds, or any other benefits or values, arising out of contracts of life insurance issued upon the absentee's life, after any distribution of such property pursuant to this section.

W.S.A. 813.31

813.31. Absentee insurance fund

(1) In each case of termination of receivership as provided in s. 813.28, the court, except in cases where the proceedings have been certified to the proper court under s. 813.26(1), shall set aside the sum there named and direct its payment by the receiver, to the secretary of administration.

(2) The secretary of administration shall retain or invest the funds thus paid in.

(3) If at any time thereafter an absentee whose estate has been distributed under a final finding and judgment made as herein provided shall appear and make claim for reimbursement, the court may in a proceeding by the claimant against the secretary of administration order payment to the claimant as in its opinion may be fair and adequate under the circumstances.

W.S.A. 816.04

816.04. Appointment of receiver

A receiver may be appointed but before appointing a receiver the court or judge shall ascertain, if practicable, whether any other supplementary proceedings are pending against the judgment debtor, and if there be any, the plaintiff therein shall have notice to appear and shall have notice of all subsequent proceedings in relation to such receivership. There shall be but one receivership at any time.

WYOMING

W.S.1977 § 1-33-101

§ 1-33-101. Cases in which receiver appointed

- (a) A receiver may be appointed by the district court in the following actions or cases:
- (i) By a vendor to vacate a fraudulent purchase of property;
 - (ii) By a creditor to subject any property or fund to his claim;
 - (iii) By a partner or other person jointly owning or interested in any property or fund, 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;
 - (iv) By a mortgagee for the foreclosure of his mortgage and sale of mortgaged property where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that a condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;
 - (v) After judgment to carry the judgment into effect;
 - (vi) After judgment to dispose of the property according to the judgment or preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;
 - (vii) When a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights; and
 - (viii) In all other cases where receivers have been appointed by courts of equity.

W.S.1977 § 1-33-102

§ 1-33-102. Persons ineligible as receiver; exceptions

No person interested in an action shall be appointed receiver or be a representative of the receiver except by consent of the parties.

W.S.1977 § 1-33-103

§ 1-33-103. Oath and bond of receiver

Before he enters upon his duties the receiver must be sworn to perform faithfully and give surety approved by the court, or by the clerk upon order of the court, in such sum as the court shall direct not to exceed double the amount of any property involved, conditioned that he will faithfully discharge the duties of receiver and obey the orders of the court.

W.S.1977 § 1-33-104

§ 1-33-104. Powers of receiver

The receiver under control of the court, may bring and defend actions in his own name as receiver, take and keep possession of the property, receive rents, collect, compound for and compromise demands, make transfers and generally do acts respecting the property as the court may authorize.

W.S.1977 § 1-33-105

§ 1-33-105. Investment of funds by receiver

Funds in the hands of a receiver may be invested upon interest by order of the court with the consent of all parties to the action.

W.S.1977 § 1-33-107

§ 1-33-107. Enforcement of orders of court

When a court orders the deposit or delivery of money or other thing and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may order the sheriff to take the money or thing and deposit or deliver it in conformity with the direction of the court.

W.S.1977 § 1-33-108

§ 1-33-108. Publication of notice of appointment of receiver; requiring claims to be presented

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 the 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.

W.S.1977 § 1-33-109

§ 1-33-109. Publication of notice of appointment of receiver; proof of publication; procedure when claimant out of state

After the notice is given as required, a copy with an affidavit of publication must be filed in the office of the clerk of court and the court shall enter a decree that notice to creditors has been duly given and that all claims not exhibited as required by law are barred. When it appears by affidavit to the satisfaction of the court that a claimant had no notice by reason of being out of the state, the claim may upon order of the court be presented at any time before a decree of final settlement of the receivership is entered.

W.S.1977 § 1-33-110

§ 1-33-110. Time for bringing suit against receiver

When a properly filed claim is rejected by the receiver, or if allowed by the receiver is rejected by the court, the holder of the claim must bring suit against the receiver within four (4) months after the date upon which he is given notice of the rejection, otherwise the claim is forever barred.