

STATUTORY TEXT ONLY

MEMORANDUM

TO: Drafting Committee, Advisors, and Observers – Model Commercial Real Estate Receiverships Act

CC: Harriett Lansing, Richard Cassidy, Anita Ramasastry, Lane Shetterly, John Sebert, and Ben Orzeski

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

DATE: October 4, 2014

RE: Redline comparison of the October 3, 2014 Draft to the 2014 Annual Meeting Draft

For your convenience, here is a redline comparison of the latest version of the Act to the 2014 Annual Meeting Draft.

This comparison is an informal document, meant only as an aid to your review of the current draft, and to give you an idea of where changes have been made. The October __, 2014 draft is the definitive document that we’ll work from at our November 14 – 15, 2014 meeting.

We hope you find it useful.

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

3

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

5 (1) “Affiliate” means:

6 (A) with respect to an individual:

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

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

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

10 ancestor or lineal descendant of the individual or the individual’s spouse [or domestic partner];

11 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,

STATUTORY TEXT ONLY

1 grandniece, or grandnephew of the individual, whether related by the whole or the half blood or
2 adoption, or the spouse of any of them; or

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

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

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

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

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

11 (2) “After notice and a hearing” means after the notice and opportunity for a hearing
12 appropriate in the particular circumstances.

13 (3) “Assignee of rents” means a person entitled to enforce an assignment of rents.

14 (4) “Assignment of rents” means a transfer of an interest in rents in connection with an
15 obligation secured by real property located in this state from which the rents arise.

16 (5) “Assignor of rents” means a person that executes an assignment of rents or a
17 successor in ownership of the real property described in the assignment.

18 (6) “Court” means [identify court of general equity jurisdiction in this state].

19 (7) “Executory contract” means a contract, including a lease, under which the obligations
20 of all parties are not fully performed and the failure of a party to complete performance of its
21 obligations would constitute a material breach.

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

STATUTORY TEXT ONLY

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

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

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

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

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

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

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

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

18 (17) “Receiver” means a person appointed by the court as the court’s agent, and subject
19 to the court’s direction, to take possession of, manage, and, if authorized by this [act] or order of
20 the court, dispose of receivership property.

21 (18) “Receivership” means a proceeding in which a receiver is appointed.

22 (19) “Receivership property” means the property of an owner which is described in the
23 order appointing a receiver or a subsequent order, and includes any proceeds from the sale, lease,

STATUTORY TEXT ONLY

1 license, exchange, or other disposition of the property.

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

4 ~~(20) “Residential property” means real property improved with not more than four
5 dwelling units. The term includes an attached single family unit, a single family manufactured
6 housing unit if treated as real property under law of this state other than this [act], a time share in
7 residential property if treated as real property under law of this state other than this [act], real
8 property on which construction of not more than four dwelling units has commenced, and a
9 single family unit in a common interest community. The term does not include a parcel of real
10 property which is used or configured for use primarily for non residential purposes such as
11 farming, commercial, or industrial use.~~

12 (21) “Rents” means:

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

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

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

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

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

STATUTORY TEXT ONLY

1 ~~within the third degree.~~

2 **Alternative B**

3 ~~—— (b) This [act] does not apply to a receivership for real property that is a single family~~
4 ~~residence used predominantly as the owner’s primary residence unless the owner collects rent or~~
5 ~~other income from a tenant or occupier other than an individual related to the owner by affinity~~
6 ~~or consanguinity within the third degree or in a step or adoptive relationship within the third~~
7 ~~degree.~~

8 **End of Alternatives**

9 (b) This [act] does not apply to a receivership for real property improved by one to four
10 dwelling units unless:

11 (1) the property is configured for use for agricultural, commercial, or industrial
12 purposes;

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

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

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

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

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

STATUTORY TEXT ONLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

SECTION 5. APPOINTMENT.

(a) After notice and a hearing, the court may appoint a receiver ~~under this [act]~~:

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

- (A) being subjected to waste;
- (B) is in danger of loss or material impairment; or
- (C) has been or may be the subject of a voidable ~~transfer~~ transaction.

(2) after judgment:

- (A) to carry the judgment into effect; or
- (B) to preserve nonexempt property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

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

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

- (A) the object of the action is the dissolution of the person;
- (B) the person has been dissolved; or

STATUTORY TEXT ONLY

1 (C) the person is insolvent or generally is not paying the person's debts as
2 those debts become due [unless the debts are the subject of bona fide dispute]; [and]

3 (5) in other actions in which receivers ~~have been~~ may be appointed on equitable
4 grounds ~~or as provided by law~~ [; and]

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

7 (b) [In connection with the foreclosure of a mortgage or enforcement of an assignment of
8 rents, a mortgagee or assignee of rents is entitled to appointment of a receiver if there is a default
9 under the mortgage or assignment and:

10 (1) the mortgagor or assignor of rents agreed in a signed record to the
11 appointment of a receiver in the event of default;

12 (2) the owner otherwise agreed in a signed record to the appointment of a
13 receiver;

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

16 (4) the owner fails to turn over to the mortgagee or assignee any rents the
17 mortgagee or assignee was entitled to collect; or

18 (5) a subordinate creditor obtains appointment of a receiver for the property.

19 (c) [The court may appoint a receiver ex parte if the person seeking the appointment
20 establishes that the circumstances justify immediate appointment. If the court appoints a receiver
21 ex parte, the court shall set a hearing to be held as soon as practicable after the appointment. The
22 court may condition the ex parte appointment on the giving of security by the person seeking the
23 appointment, in the amount the court specifies, for the payment of ~~costs and damages~~, including

STATUTORY TEXT ONLY

1 reasonable attorneys' fees, incurred or suffered by any person if the court finds that the
2 appointment was not justified. If, after notice and a hearing, the court finds that the ex parte
3 appointment was justified, the court shall release the security.

4

5 **SECTION 6. IDENTITY OF RECEIVER; DISCLOSURE OF INTEREST.**

6 (a) [Except by consent of all parties in a signed record, the] [The] court may not appoint
7 a person as receiver unless the person provides evidence under penalty of perjury that the person
8 is independent.

9 (b) A person is not independent under subsection (a) if the person:

10 ~~(1) is related to a party by affinity or consanguinity within the third degree or in a~~
11 ~~step or adoptive relationship within the third degree;~~

12 ~~(2) is an officer, director, manager, member, partner, trustee, employee, or~~
13 ~~controlling shareholder of a party;~~

14 (1) is an affiliate of a party;

15 ~~(3)~~ has an interest materially adverse to the interests of a party;

16 ~~(4)~~ has a material financial interest in the outcome of the action, other than
17 compensation the court may allow to the receiver;

18 ~~(5)~~ has a debtor-creditor relationship with a party; or

19 ~~(6)~~ holds an equity interest in a party, other than a noncontrolling interest in a
20 publicly-traded company.

21 (c) Notwithstanding subsection (b), a person is not disqualified under subsection (a) from
22 appointment as receiver solely because the person was appointed receiver or is owed
23 compensation in an unrelated matter involving a party or was engaged by a party in a matter

STATUTORY TEXT ONLY

1 unrelated to the underlying dispute.

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

4

5 **SECTION 7. RECEIVER'S BOND.**

6 (a) Except as otherwise provided ~~by law of this state other than this [act],~~ in subsection
7 (b), [before a receiver commences the receiver's duties] [not later than [five] days after a receiver
8 commences the receiver's duties], the receiver shall execute a bond in the amount the court
9 specifies, with one or more sureties approved by the court, conditioned on the receiver's faithful
10 discharge of the receiver's duties in accordance with the orders of the court and law of this state.
11 Unless the court orders otherwise, the receiver's bond runs in favor of all persons that have an
12 interest in the receivership property.

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

17 (c) A claim against a receiver's bond or alternative security must be made not later than
18 [one year] after the date the receiver is discharged.

19

20 **SECTION 8. RECEIVER'S STATUS AS LIEN CREDITOR.** At the time a receiver
21 is appointed ~~under this [act],~~ the receiver has the status of a lien creditor:

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

STATUTORY TEXT ONLY

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

3

4 **SECTION 9. SECURITY INTEREST IN AFTER-ACQUIRED PROPERTY.**

5 Except as otherwise provided by law of this state other than this [act], property that a receiver or
6 owner acquires after appointment of the receiver is subject to a security agreement entered into
7 before the appointment to the same extent as if the court had not appointed a receiver.

8

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

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

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

15 (2) subject to subsection (b), a person that has possession, custody, or control of
16 receivership property shall turn the property over to the receiver.

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

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

STATUTORY TEXT ONLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SECTION 11. POWERS AND DUTIES OF RECEIVER.

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

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

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

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

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

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

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

(7) ~~employ attorneys, accountants, appraisers, auctioneers, brokers, or other~~ engage professionals as provided in Section 14;

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

STATUTORY TEXT ONLY

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

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

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

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

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

11 (4) pay compensation to the receiver as provided in Section 19 or 22, or to each
12 ~~attorney, accountant, appraiser, auctioneer, broker, or other professional employed~~ professional
13 engaged by the receiver as provided in Section 14;

14 (5) make improvements to receivership property;

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

16 and

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

19 (c) A receiver shall:

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

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

STATUTORY TEXT ONLY

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

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

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

8

9 **SECTION 12. DUTIES OF OWNER.**

10 (a) An owner shall:

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

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

15 (3) ~~provide the receiver with~~ make available to the receiver all documents and
16 information relating to receivership property, including passwords and other information needed
17 to obtain or maintain access to or control of receivership property;

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

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

23 (b) If an owner is a person other than an individual, this section applies to each officer,

STATUTORY TEXT ONLY

1 director, manager, member, partner, trustee, or other individual exercising or having the power to
2 exercise control over the affairs of the owner.

3

4 **SECTION 13. AUTOMATIC STAY.**

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

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

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

11 (b) In addition to the stay provided in subsection (a), after notice and a hearing, the court
12 may order a stay of an act, action, or proceeding against or relating to receivership property if
13 necessary to protect the property and facilitate administration of the receivership.

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

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

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

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

23 (3) commencement or continuation of a criminal proceeding ~~against the owner~~;

STATUTORY TEXT ONLY

1 ~~(4) commencement or continuation of an action or proceeding to:~~

2 ~~(A) establish paternity;~~

3 ~~(B) establish or modify an order for alimony, maintenance, or support; or~~

4 ~~(C) collect alimony, maintenance, or support under a judicial order;~~

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

8 ~~(65)~~ establishment by a governmental unit of a tax liability and an appeal of the
9 liability.

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

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

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

15 (2) ~~punish-sanction~~ the violation as a civil contempt of court.

16
17 **SECTION 14. ~~EMPLOYMENT~~ EMPLOYMENT AND COMPENSATION OF**
18 **PROFESSIONAL.**

19 (a) With court approval in the order appointing a receiver, or otherwise after notice and a
20 hearing, the receiver may ~~employ-engage~~ an attorney, accountant, appraiser, auctioneer, broker,
21 or other professional to assist the receiver in performing the receiver's duties. The receiver shall
22 disclose to the court the identity and qualifications of the professional, the scope and nature of
23 the proposed engagement, the proposed compensation, and any potential conflict of interest. A

STATUTORY TEXT ONLY

1 person is not disqualified from ~~employment~~engagement under this section solely because of the
2 person's ~~employment~~engagement by, representation of, or other relationship with the receiver, a
3 creditor, or other party if the court finds the ~~employment~~engagement is appropriate. This [act]
4 does not preclude the receiver from providing services as an attorney, accountant, auctioneer, or
5 broker when licensed to do so.

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

10

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

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

15 **Alternative A**

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

20 **Alternative B**

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

STATUTORY TEXT ONLY

1 person that obtained the appointment of the receiver, any subordinate lien, and any rights of
2 redemption, but is subject to a valid senior lien unless the holder of the lien authorized the
3 transfer free and clear of the lien [in a signed record].

4 **Alternative C**

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

10 **End of Alternatives**

11 (c) Subject to Section 16, on a sale under subsection (b), a lien on the property which is
12 extinguished by the sale attaches to the proceeds of the sale, net of reasonable expenses incurred
13 in the sale, with the same validity, perfection, and priority as the lien had ~~with respect to~~ on the
14 property immediately before the sale.

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

20 (e) A reversal or modification of an order approving a transfer under this section does
21 not affect the validity of the transfer to a person that acquired the property in good faith, whether
22 or not the person knew prior to the transfer of the motion for reversal or modification, unless the
23 court stays the order.

STATUTORY TEXT ONLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SECTION 16. DISTRIBUTION TO SECURED CREDITOR.

(a) Subject to subsection (b), ~~a creditor with a perfected lien on receivership property is entitled to receive the property or proceeds from a transfer of the property~~ any distribution of receivership property to a creditor with a perfected lien on the property shall be made in accordance with the creditor’s priority under law of this state other than this [act].

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

SECTION 17. EXECUTORY CONTRACT.

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

(b) Except as otherwise provided in subsection (h), with court approval after notice and a hearing, a receiver may adopt or reject an executory contract of the owner relating to receivership property. If the receiver does not request court approval to adopt or reject a contract within [90] days after the receiver’s appointment or such longer time as the court orders, the receiver is deemed to reject the contract. The court may condition the receiver’s adoption and continued performance of the contract on terms appropriate under the circumstances.

(c) A receiver’s performance of an executory contract before court approval under subsection (b) of its adoption or rejection is not an adoption of the contract and does not preclude

STATUTORY TEXT ONLY

1 the receiver from seeking approval to reject the contract.

2 (d) A provision in an executory contract which effects or permits a forfeiture,
3 modification, or termination of the contract ~~on account~~ because of the appointment of a receiver
4 or the financial condition of the owner does not affect a receiver's power under subsection (b) to
5 adopt the contract.

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

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

11 (2) [30] days after the court approves the rejection.

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

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

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

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

STATUTORY TEXT ONLY

1 account of the damages.

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

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

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

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

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

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

16

17 **SECTION 18. IMMUNITY OF RECEIVER.**

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

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

STATUTORY TEXT ONLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

SECTION 19. INTERIM REPORT OF RECEIVER. The court may order a receiver

to file an interim report of:

- (1) the activities of the receiver since a previous report;
- (2) cash receipts and disbursements, including a payment made to or proposed to be made to a professional ~~employed~~engaged by the receiver;
- (3) receipts and dispositions of receivership property;
- (4) fees and expenses of the receiver and, if not filed separately, a motion for approval of payment of the fees and expenses; and
- (5) other matters specified in the order.

SECTION 20. CLAIM AGAINST RECEIVERSHIP.

(a) A receiver shall give notice of appointment of the receiver to creditors of the owner

by:

- (1) ~~mailing~~giving notice of the appointment by first class mail or other commercially reasonable delivery method to the last known address of each creditor; and
- (2) publishing notice of the appointment, at least once a week for three consecutive weeks, in a newspaper having general circulation in the [county] where the appointing court is located.

(b) Except as otherwise provided in subsection (d), a creditor with a claim against the owner which arose before a receiver's appointment must submit the claim to the receiver on or before the date specified in the notice required by subsection (a). The date specified must be at least [90] days after the later of the mailing or last publication of the notice under subsection (a),

STATUTORY TEXT ONLY

1 unless after notice and a hearing the court reduces or extends the period. The claim must set
2 forth the name and address of the creditor and the nature and amount of the claim, be signed by
3 the creditor under penalty of perjury, and include a copy of any record on which the claim is
4 based. [A claim submitted in accordance with this subsection is prima facie evidence of the
5 validity and amount of the claim.]

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

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

15 (e) After notice and a hearing, if the court concludes that receivership property is likely
16 to be insufficient to satisfy the claims of creditors holding secured claims against the ~~receivership~~
17 property, the court may order that unsecured creditors need not submit claims under this section.

18

19 **SECTION 21. REPLACEMENT OF RECEIVER; TERMINATION OF**
20 **RECEIVERSHIP.**

21 (a) The court shall replace a receiver if the receiver dies, resigns, or refuses or fails to
22 fulfill the receiver's duties ~~under this [act]~~.

23 (b) If the court finds that a receiver replaced under subsection (a) has accounted fully for

STATUTORY TEXT ONLY

1 and turned over to the successor receiver all receivership property and has filed a report of all
2 receipts and disbursements during the replaced receiver's tenure, the court shall enter an order
3 discharging the replaced receiver from all further duties as receiver.

4 (c) After notice and a hearing, the court may discharge a receiver and terminate the
5 court's administration of the receivership property if the court finds that appointment of the
6 receiver was improvident or that the circumstances no longer warrant continuation of the
7 receivership. [If the court finds that the appointment was procured wrongfully or in bad faith, the
8 court may assess against the person that procured the appointment all of the receiver's fees, costs
9 of the receivership, and any appropriate sanction.]

10

11 **SECTION 22. FINAL REPORT OF RECEIVER; DISCHARGE.**

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

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

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

17 (3) a request for adoption or rejection of each executory contract that has not
18 already been adopted or rejected;

19 (4) a list of all creditor claims and the receiver's recommendation regarding the
20 allowance or disallowance of each claim;

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

23 (46) if not filed separately, a request for approval of the payment of fees and

STATUTORY TEXT ONLY

1 expenses of the receiver.

2 (b) After notice and a hearing, the court may approve a final report filed under
3 subsection (a). The approval discharges the receiver ~~and the surety on the receiver's bond~~ for all
4 matters in the report.

5

6 **SECTION 23. ANCILLARY RECEIVERSHIP.**

7 (a) The court may appoint a person appointed as a receiver in another state, or that
8 person's nominee, as an ancillary receiver with respect to property located in this state or subject
9 to the jurisdiction of the court if:

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

11 and

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

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

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

18

19 **SECTION 24. EFFECT OF ENFORCEMENT BY MORTGAGEE OR ASSIGNEE**
20 **OF RENTS.**

21 [(a)] A motion by a mortgagee or assignee of rents for appointment of a receiver ~~under~~
22 ~~this [act]~~, appointment of a receiver ~~under this [act]~~, or application of receivership property or
23 proceeds to the secured obligation by the mortgagee or assignee does not:

STATUTORY TEXT ONLY

1 (1) make the mortgagee or assignee a mortgagee in possession of the real
2 property;

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

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

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

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

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

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

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

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

21
22

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

STATUTORY TEXT ONLY

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

3

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

5

6 **SECTION 27. SAVINGS PROVISION.** This [act] applies to a request for
7 appointment of a receiver filed on or after the effective date of this [act].

8

9 **SECTION 28. REPEALS.** This [act] repeals