

By: Representative Ladner

To: Judiciary A

HOUSE BILL NO. 729

1 AN ACT TO CREATE THE UNIFORM COMMERCIAL REAL ESTATE  
 2 RECEIVERSHIP ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT THE ACT  
 3 APPLIES TO A RECEIVERSHIP FOR AN INTEREST IN REAL PROPERTY AND ANY  
 4 PERSONAL PROPERTY RELATED TO OR USED IN OPERATING THE REAL  
 5 PROPERTY AND TO DECLARE EXCLUSIONS FROM THE ACT'S SCOPE; TO  
 6 PROVIDE THAT MATTERS RELATING TO A RECEIVERSHIP ARE WITHIN THE  
 7 JURISDICTION OF THE CHANCERY COURTS; TO AUTHORIZE THE CHANCERY  
 8 COURT TO APPOINT RECEIVERS; TO PRESCRIBE THE DUTIES OF RECEIVERS  
 9 AND PROPERTY OWNERS; TO REQUIRE RECEIVERS TO FILE A FINAL REPORT  
 10 WITH THE COURT; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1. SHORT TITLE.** This act may be cited as the  
 13 "Uniform Commercial Real Estate Receivership Act."

14 **SECTION 2. DEFINITIONS.** In this act:

15 (1) "Affiliate" means:

16 (A) With respect to an individual:

17 (i) A companion of the individual;

18 (ii) A lineal ancestor or descendant, whether by  
 19 blood or adoption, of:

20 (I) The individual; or

21 (II) A companion of the individual;



22 (iii) A companion of an ancestor or descendant  
23 described in clause (ii);

24 (iv) A sibling, aunt, uncle, great aunt, great  
25 uncle, first cousin, niece, nephew, grandniece, or grandnephew of  
26 the individual, whether related by the whole or the half blood or  
27 adoption, or a companion of any of them; or

28 (v) Any other individual occupying the residence  
29 of the individual; and

30 (B) With respect to a person other than an individual:

31 (i) Another person that directly or indirectly  
32 controls, is controlled by, or is under common control with the  
33 person;

34 (ii) An officer, director, manager, member,  
35 partner, employee, or trustee or other fiduciary of the person; or

36 (iii) A companion of, or an individual occupying  
37 the residence of, an individual described in clause (i) or (ii).

38 (2) "Companion" means:

39 (A) The spouse of an individual;

40 (B) The registered domestic partner of an individual;

41 or

42 (C) Another individual in a civil union with an  
43 individual.

44 (3) "Court" means the chancery court.

45 (4) "Executory contract" means a contract, including a  
46 lease, under which each party has an unperformed obligation and



47 the failure of a party to complete performance would constitute a  
48 material breach.

49 (5) "Governmental unit" means an office, department,  
50 division, bureau, board, commission, or other agency of this state  
51 or a subdivision of this state.

52 (6) "Lien" means an interest in property which secures  
53 payment or performance of an obligation.

54 (7) "Mortgage" means a record, however denominated, that  
55 creates or provides for a consensual lien on real property or  
56 rents, even if it also creates or provides for a lien on personal  
57 property.

58 (8) "Mortgagee" means a person entitled to enforce an  
59 obligation secured by a mortgage.

60 (9) "Mortgagor" means a person that grants a mortgage or a  
61 successor in ownership of the real property described in the  
62 mortgage.

63 (10) "Owner" means the person for whose property a receiver  
64 is appointed.

65 (11) "Person" means an individual, estate, business or  
66 nonprofit entity, public corporation, government or governmental  
67 subdivision, agency, or instrumentality, or other legal entity.

68 (12) "Proceeds" means the following property:

69 (A) Whatever is acquired on the sale, lease, license,  
70 exchange, or other disposition of receivership property;



71 (B) Whatever is collected on, or distributed on account  
72 of, receivership property;

73 (C) Rights arising out of receivership property;

74 (D) To the extent of the value of receivership  
75 property, claims arising out of the loss, nonconformity, or  
76 interference with the use of, defects or infringement of rights  
77 in, or damage to the property; or

78 (E) To the extent of the value of receivership property  
79 and to the extent payable to the owner or mortgagee, insurance  
80 payable by reason of the loss or nonconformity of, defects or  
81 infringement of rights in, or damage to the property.

82 (13) "Property" means all of a person's right, title, and  
83 interest, both legal and equitable, in real and personal property,  
84 tangible and intangible, wherever located and however acquired.  
85 The term includes proceeds, products, offspring, rents, or profits  
86 of or from the property.

87 (14) "Receiver" means a person appointed by the court as the  
88 court's agent, and subject to the court's direction, to take  
89 possession of, manage, and, if authorized by this act or court  
90 order, transfer, sell, lease, license, exchange, collect, or  
91 otherwise dispose of receivership property.

92 (15) "Receivership" means a proceeding in which a receiver  
93 is appointed.

94 (16) "Receivership property" means the property of an owner  
95 which is described in the order appointing a receiver or a



96 subsequent order. The term includes any proceeds, products,  
97 offspring, rents, or profits of or from the property.

98 (17) "Record", used as a noun, means information that is  
99 inscribed on a tangible medium or that is stored on an electronic  
100 or other medium and is retrievable in perceivable form.

101 (18) "Rents" means:

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

105 (B) Sums payable to a mortgagor under a policy of  
106 rental-interruption insurance covering real property;

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

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

112 (E) Sums payable to a mortgagor for payment or  
113 reimbursement of expenses incurred in owning, operating, and  
114 maintaining real property or constructing or installing  
115 improvements on real property; or

116 (F) Other sums payable under an agreement relating to  
117 the real property of another person which constitute rents under  
118 law of this state other than this act.

119 (19) "Secured obligation" means an obligation the payment or  
120 performance of which is secured by a security agreement.



121 (20) "Security agreement" means an agreement that creates or  
122 provides for a lien.

123 (21) "Sign" means, with present intent to authenticate or  
124 adopt a record:

125 (A) To execute or adopt a tangible symbol; or

126 (B) To attach to or logically associate with the record  
127 an electronic sound, symbol, or process.

128 (22) "State" means a state of the United States, the  
129 District of Columbia, Puerto Rico, the United States Virgin  
130 Islands, or any territory or insular possession subject to the  
131 jurisdiction of the United States.

132 **SECTION 3. NOTICE AND OPPORTUNITY FOR HEARING.** (a) Except  
133 as otherwise provided in subsection (b), the court may issue an  
134 order under this act only after notice and opportunity for a  
135 hearing appropriate in the circumstances.

136 (b) The court may issue an order under this act:

137 (1) Without prior notice if the circumstances require  
138 issuance of an order before notice is given;

139 (2) After notice and without a prior hearing if the  
140 circumstances require issuance of an order before a hearing is  
141 held; or

142 (3) After notice and without a hearing if no interested  
143 party timely requests a hearing.

144 **SECTION 4. SCOPE; EXCLUSIONS.** (a) Except as otherwise  
145 provided in subsection (b) or (c), this act applies to a



146 receivership for an interest in real property and any personal  
147 property related to or used in operating the real property.

148 (b) This act does not apply to a receivership for an  
149 interest in real property improved by one to four dwelling units  
150 unless:

151 (1) The interest is used for agricultural, commercial,  
152 industrial, or mineral-extraction purposes, other than incidental  
153 uses by an owner occupying the property as the owner's primary  
154 residence;

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

159 (3) The owner planned or is planning to develop the  
160 property into one or more dwelling units to be sold or leased in  
161 the ordinary course of the owner's business; or

162 (4) The owner is collecting or has the right to collect  
163 rents or other income from the property from a person other than  
164 an affiliate of the owner.

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

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



171 (e) Unless displaced by a particular provision of this act,  
172 the principles of law and equity supplement this act.

173 **SECTION 5. POWER OF COURT.** The court that appoints a  
174 receiver under this act has exclusive jurisdiction to direct the  
175 receiver and determine any controversy related to the receivership  
176 or receivership property.

177 **SECTION 6. APPOINTMENT OF RECEIVER.** (a) The court may  
178 appoint a receiver:

179 (1) Before judgment, to protect a party that  
180 demonstrates an apparent right, title, or interest in real  
181 property that is the subject of the action, if the property or its  
182 revenue-producing potential:

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

185 (B) Has been or is about to be the subject of a  
186 voidable transaction;

187 (2) After judgment:

188 (A) To carry the judgment into effect; or

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

193 (3) In an action in which a receiver for real property  
194 may be appointed on equitable grounds; or





195           (4) During the time allowed for redemption, to preserve  
196 real property sold in an execution or foreclosure sale and secure  
197 its rents to the person entitled to the rents.

198           (b) In connection with the foreclosure or other enforcement  
199 of a mortgage, a mortgagee is entitled to appointment of a  
200 receiver for the mortgaged property if:

201           (1) Appointment is necessary to protect the property  
202 from waste, loss, transfer, dissipation, or impairment;

203           (2) The mortgagor agreed in a signed record to  
204 appointment of a receiver on default;

205           (3) The owner agreed, after default and in a signed  
206 record, to appointment of a receiver;

207           (4) The property and any other collateral held by the  
208 mortgagee are not sufficient to satisfy the secured obligation;

209           (5) The owner fails to turn over to the mortgagee  
210 proceeds or rents the mortgagee was entitled to collect; or

211           (6) The holder of a subordinate lien obtains  
212 appointment of a receiver for the property.

213           (c) The court may condition appointment of a receiver  
214 without prior notice under Section 3(b)(1) or without a prior  
215 hearing under Section 3(b)(2) on the giving of security by the  
216 person seeking the appointment for the payment of damages,  
217 reasonable attorney's fees, and costs incurred or suffered by any  
218 person if the court later concludes that the appointment was not



219 justified. If the court later concludes that the appointment was  
220 justified, the court shall release the security.

221 **SECTION 7. DISQUALIFICATION FROM APPOINTMENT AS RECEIVER;**

222 **DISCLOSURE OF INTEREST.** (a) The court may not appoint a person  
223 as receiver unless the person submits to the court a statement  
224 under penalty of perjury that the person is not disqualified.

225 (b) Except as otherwise provided in subsection (c), a person  
226 is disqualified from appointment as receiver if the person:

227 (1) Is an affiliate of a party;

228 (2) Has an interest materially adverse to an interest  
229 of a party;

230 (3) Has a material financial interest in the outcome of  
231 the action, other than compensation the court may allow the  
232 receiver;

233 (4) Has a debtor-creditor relationship with a party; or

234 (5) Holds an equity interest in a party, other than a  
235 noncontrolling interest in a publicly-traded company.

236 (c) A person is not disqualified from appointment as  
237 receiver solely because the person:

238 (1) Was appointed receiver or is owed compensation in  
239 an unrelated matter involving a party or was engaged by a party in  
240 a matter unrelated to the receivership;

241 (2) Is an individual obligated to a party on a debt  
242 that is not in default and was incurred primarily for personal,  
243 family, or household purposes; or



244 (3) Maintains with a party a deposit account as defined  
245 in U.C.C. Section 9-102(a) (29).

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

249 **SECTION 8. RECEIVER'S BOND; ALTERNATIVE SECURITY.** (a)

250 Except as otherwise provided in subsection (b), a receiver shall  
251 post with the court a bond that:

252 (1) Is conditioned on the faithful discharge of the  
253 receiver's duties;

254 (2) Has one or more sureties approved by the court;

255 (3) Is in an amount the court specifies; and

256 (4) Is effective as of the date of the receiver's  
257 appointment.

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

263 (c) The court may authorize a receiver to act before the  
264 receiver posts the bond or alternative security required by this  
265 section.

266 (d) A claim against a receiver's bond or alternative  
267 security must be made not later than one (1) year after the date  
268 the receiver is discharged.



269           **SECTION 9. STATUS OF RECEIVER AS LIEN CREDITOR.** On  
270 appointment of a receiver, the receiver has the status of a lien  
271 creditor under:

272           (1) U.C.C. Article 9 as to receivership property that is  
273 personal property or fixtures; and

274           (2) Those provisions of law governing the recording of land  
275 records as to receivership property that is real property.

276           **SECTION 10. SECURITY AGREEMENT COVERING AFTER-ACQUIRED**

277 **PROPERTY.** Except as otherwise provided by law of this state other  
278 than this act, property that a receiver or owner acquires after  
279 appointment of the receiver is subject to a security agreement  
280 entered into before the appointment to the same extent as if the  
281 court had not appointed the receiver.

282           **SECTION 11. COLLECTION AND TURNOVER OF RECEIVERSHIP**

283 **PROPERTY.** (a) Unless the court orders otherwise, on demand by a  
284 receiver:

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

289           (2) Subject to subsection (c), a person that has  
290 possession, custody, or control of receivership property shall  
291 turn the property over to the receiver.



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

295 (c) If a creditor has possession, custody, or control of  
296 receivership property and the validity, perfection, or priority of  
297 the creditor's lien on the property depends on the creditor's  
298 possession, custody, or control, the creditor may retain  
299 possession, custody, or control until the court orders adequate  
300 protection of the creditor's lien.

301 (d) Unless a bona fide dispute exists about a receiver's  
302 right to possession, custody, or control of receivership property,  
303 the court may sanction as civil contempt a person's failure to  
304 turn the property over when required by this section.

305 **SECTION 12. POWERS AND DUTIES OF RECEIVER.** (a) Except as  
306 limited by court order or law of this state other than this act, a  
307 receiver may:

308 (1) Collect, control, manage, conserve, and protect  
309 receivership property;

310 (2) Operate a business constituting receivership  
311 property, including preservation, use, sale, lease, license,  
312 exchange, collection, or disposition of the property in the  
313 ordinary course of business;

314 (3) In the ordinary course of business, incur unsecured  
315 debt and pay expenses incidental to the receiver's preservation,



316 use, sale, lease, license, exchange, collection, or disposition of  
317 receivership property;

318 (4) Assert a right, claim, cause of action, or defense  
319 of the owner which relates to receivership property;

320 (5) Seek and obtain instruction from the court  
321 concerning receivership property, exercise of the receiver's  
322 powers, and performance of the receiver's duties;

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

328 (7) Engage a professional as provided in Section 15;

329 (8) Apply to a court of another state for appointment  
330 as ancillary receiver with respect to receivership property  
331 located in that state; and

332 (9) Exercise any power conferred by court order, this  
333 act, or law of this state other than this act.

334 (b) With court approval, a receiver may:

335 (1) Incur debt for the use or benefit of receivership  
336 property other than in the ordinary course of business;

337 (2) Make improvements to receivership property;

338 (3) Use or transfer receivership property other than in  
339 the ordinary course of business as provided in Section 16;



340 (4) Adopt or reject an executory contract of the owner  
341 as provided in Section 17;

342 (5) Pay compensation to the receiver as provided in  
343 Section 21, and to each professional engaged by the receiver as  
344 provided in Section 15;

345 (6) Recommend allowance or disallowance of a claim of a  
346 creditor as provided in Section 20; and

347 (7) Make a distribution of receivership property as  
348 provided in Section 20.

349 (c) A receiver shall:

350 (1) Prepare and retain appropriate business records,  
351 including a record of each receipt, disbursement, and disposition  
352 of receivership property;

353 (2) Account for receivership property, including the  
354 proceeds of a sale, lease, license, exchange, collection, or other  
355 disposition of the property;

356 (3) File with the chancery clerk's office a copy of the  
357 order appointing the receiver and, if a legal description of the  
358 real property is not included in the order, the legal description;

359 (4) Disclose to the court any fact arising during the  
360 receivership which would disqualify the receiver under Section 7;  
361 and

362 (5) Perform any duty imposed by court order, this act,  
363 or law of this state other than this act.



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

366 **SECTION 13. DUTIES OF OWNER.** (a) An owner shall:

367 (1) Assist and cooperate with the receiver in the  
368 administration of the receivership and the discharge of the  
369 receiver's duties;

370 (2) Preserve and turn over to the receiver all  
371 receivership property in the owner's possession, custody, or  
372 control;

373 (3) Identify all records and other information relating  
374 to the receivership property, including a password, authorization,  
375 or other information needed to obtain or maintain access to or  
376 control of the receivership property, and make available to the  
377 receiver the records and information in the owner's possession,  
378 custody, or control;

379 (4) On subpoena, submit to examination under oath by  
380 the receiver concerning the acts, conduct, property, liabilities,  
381 and financial condition of the owner or any matter relating to the  
382 receivership property or the receivership; and

383 (5) Perform any duty imposed by court order, this act,  
384 or law of this state other than this act.

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





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

391 (1) Award the receiver actual damages caused by the  
392 person's failure, reasonable attorney's fees, and costs; and

393 (2) Sanction the failure as civil contempt.

394 **SECTION 14. STAY; INJUNCTION.** (a) Except as otherwise  
395 provided in subsection (d) or ordered by the court, an order  
396 appointing a receiver operates as a stay, applicable to all  
397 persons, of an act, action, or proceeding:

398 (1) To obtain possession of, exercise control over, or  
399 enforce a judgment against receivership property; and

400 (2) To enforce a lien against receivership property to  
401 the extent the lien secures a claim against the owner which arose  
402 before entry of the order.

403 (b) Except as otherwise provided in subsection (d), the  
404 court may enjoin an act, action, or proceeding against or relating  
405 to receivership property if the injunction is necessary to protect  
406 the property or facilitate administration of the receivership.

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

410 (d) An order under subsection (a) or (b) does not operate as  
411 a stay or injunction of:



412 (1) An act, action, or proceeding to foreclose or  
413 otherwise enforce a mortgage by the person seeking appointment of  
414 the receiver;

415 (2) An act, action, or proceeding to perfect, or  
416 maintain or continue the perfection of, an interest in  
417 receivership property;

418 (3) Commencement or continuation of a criminal  
419 proceeding;

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

424 (5) Establishment by a governmental unit of a tax  
425 liability against the owner or receivership property or an appeal  
426 of the liability.

427 (e) The court may void an act that violates a stay or  
428 injunction under this section.

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

431 (1) Award actual damages caused by the violation,  
432 reasonable attorney's fees, and costs; and

433 (2) Sanction the violation as civil contempt.

434 **SECTION 15. ENGAGEMENT AND COMPENSATION OF PROFESSIONAL.**

435 (a) With court approval, a receiver may engage an attorney,  
436 accountant, appraiser, auctioneer, broker, or other professional



437 to assist the receiver in performing a duty or exercising a power  
438 of the receiver. The receiver shall disclose to the court:

439 (1) The identity and qualifications of the  
440 professional;

441 (2) The scope and nature of the proposed engagement;

442 (3) Any potential conflict of interest; and

443 (4) The proposed compensation.

444 (b) A person is not disqualified from engagement under this  
445 section solely because of the person's engagement by,  
446 representation of, or other relationship with the receiver, a  
447 creditor, or a party. This act does not prevent the receiver from  
448 serving in the receivership as an attorney, accountant,  
449 auctioneer, or broker when authorized by law.

450 (c) A receiver or professional engaged under subsection (a)  
451 shall file with the court an itemized statement of the time spent,  
452 work performed, and billing rate of each person that performed the  
453 work and an itemized list of expenses. The receiver shall pay the  
454 amount approved by the court.

455 **SECTION 16. USE OR TRANSFER OF RECEIVERSHIP PROPERTY NOT IN**  
456 **ORDINARY COURSE OF BUSINESS.** (a) In this section, "good faith"  
457 means honesty in fact and the observance of reasonable commercial  
458 standards of fair dealing.

459 (b) With court approval, a receiver may use receivership  
460 property other than in the ordinary course of business.



461           (c) With court approval, a receiver may transfer  
462 receivership property other than in the ordinary course of  
463 business by sale, lease, license, exchange, or other disposition.  
464 Unless the agreement of sale provides otherwise, a sale under this  
465 section is free and clear of a lien of the person that obtained  
466 appointment of the receiver, any subordinate lien, and any right  
467 of redemption but is subject to a senior lien.

468           (d) A lien on receivership property which is extinguished by  
469 a transfer under subsection (c) attaches to the proceeds of the  
470 transfer with the same validity, perfection, and priority the lien  
471 had on the property immediately before the transfer, even if the  
472 proceeds are not sufficient to satisfy all obligations secured by  
473 the lien.

474           (e) A transfer under subsection (c) may occur by means other  
475 than a public auction sale. A creditor holding a valid lien on  
476 the property to be transferred may purchase the property and  
477 offset against the purchase price part or all of the allowed  
478 amount secured by the lien, if the creditor tenders funds  
479 sufficient to satisfy in full the reasonable expenses of transfer  
480 and the obligation secured by any senior lien extinguished by the  
481 transfer.

482           (f) A reversal or modification of an order approving a  
483 transfer under subsection (c) does not affect the validity of the  
484 transfer to a person that acquired the property in good faith or  
485 revive against the person any lien extinguished by the transfer,



486 whether the person knew before the transfer of the request for  
487 reversal or modification, unless the court stayed the order before  
488 the transfer.

489         **SECTION 17. EXECUTORY CONTRACT.** (a) In this section,  
490 "timeshare interest" means an interest having a duration of more  
491 than three (3) years which grants its holder the right to use and  
492 occupy an accommodation, facility, or recreational site, whether  
493 improved or not, for a specific period less than a full year  
494 during any given year.

495         (b) Except as otherwise provided in subsection (h), with  
496 court approval, a receiver may adopt or reject an executory  
497 contract of the owner relating to receivership property. The  
498 court may condition the receiver's adoption and continued  
499 performance of the contract on terms appropriate under the  
500 circumstances. If the receiver does not request court approval to  
501 adopt or reject the contract within a reasonable time after the  
502 receiver's appointment, the receiver is deemed to have rejected  
503 the contract.

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

508         (d) A provision in an executory contract which requires or  
509 permits a forfeiture, modification, or termination of the contract  
510 because of the appointment of a receiver or the financial



511 condition of the owner does not affect a receiver's power under  
512 subsection (b) to adopt the contract.

513 (e) A receiver's right to possess or use receivership  
514 property pursuant to an executory contract terminates on rejection  
515 of the contract under subsection (b). Rejection is a breach of  
516 the contract effective immediately before appointment of the  
517 receiver. A claim for damages for rejection of the contract must  
518 be submitted by the later of:

519 (1) The time set for submitting a claim in the  
520 receivership; or

521 (2) Thirty (30) days after the court approves the  
522 rejection.

523 (f) If at the time a receiver is appointed, the owner has  
524 the right to assign an executory contract relating to receivership  
525 property under law of this state other than this act, the receiver  
526 may assign the contract with court approval.

527 (g) If a receiver rejects under subsection (b) an executory  
528 contract for the sale of receivership property that is real  
529 property in possession of the purchaser or a real-property  
530 timeshare interest, the purchaser may:

531 (1) Treat the rejection as a termination of the  
532 contract, and in that case the purchaser has a lien on the  
533 property for the recovery of any part of the purchase price the  
534 purchaser paid; or



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

542           (h) A receiver may not reject an unexpired lease of real  
543 property under which the owner is the landlord if:

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

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

548                 (3) The receiver was appointed at the request of a  
549 mortgagee and:

550                         (A) The lease is superior to the lien of the  
551 mortgage;

552                         (B) The tenant has an enforceable agreement with  
553 the mortgagee or the holder of a senior lien under which the  
554 tenant's occupancy will not be disturbed as long as the tenant  
555 performs its obligations under the lease;

556                         (C) The mortgagee has consented to the lease,  
557 either in a signed record or by its failure timely to object that  
558 the lease violated the mortgage; or



559 (D) The terms of the lease were commercially  
560 reasonable at the time the lease was agreed to and the tenant did  
561 not know or have reason to know that the lease violated the  
562 mortgage.

563 **SECTION 18. DEFENSES AND IMMUNITIES OF RECEIVER.** (a) A  
564 receiver is entitled to all defenses and immunities provided by  
565 law of this state other than this act for an act or omission  
566 within the scope of the receiver's appointment.

567 (b) A receiver may be sued personally for an act or omission  
568 in administering receivership property only with approval of the  
569 court that appointed the receiver.

570 **SECTION 19. INTERIM REPORT OF RECEIVER.** A receiver may file  
571 or, if ordered by the court, shall file an interim report that  
572 includes:

573 (1) The activities of the receiver since appointment or a  
574 previous report;

575 (2) Receipts and disbursements, including a payment made or  
576 proposed to be made to a professional engaged by the receiver;

577 (3) Receipts and dispositions of receivership property;

578 (4) Fees and expenses of the receiver and, if not filed  
579 separately, a request for approval of payment of the fees and  
580 expenses; and

581 (5) Any other information required by the court.

582 **SECTION 20. NOTICE OF APPOINTMENT; CLAIM AGAINST**

583 **RECEIVERSHIP; DISTRIBUTION TO CREDITORS.** (a) Except as otherwise





584 provided in subsection (f), a receiver shall give notice of  
585 appointment of the receiver to creditors of the owner by:

586 (1) Deposit for delivery through first-class mail or  
587 other commercially reasonable delivery method to the last-known  
588 address of each creditor; and

589 (2) Publication as directed by the court.

590 (b) Except as otherwise provided in subsection (f), the  
591 notice required by subsection (a) must specify the date by which  
592 each creditor holding a claim against the owner which arose before  
593 appointment of the receiver must submit the claim to the receiver.  
594 The date specified must be at least ninety (90) days after the  
595 later of notice under subsection (a)(1) or last publication under  
596 subsection (a)(2). The court may extend the period for submitting  
597 the claim. Unless the court orders otherwise, a claim that is not  
598 submitted timely is not entitled to a distribution from the  
599 receivership.

600 (c) A claim submitted by a creditor under this section must:

601 (1) State the name and address of the creditor;

602 (2) State the amount and basis of the claim;

603 (3) Identify any property securing the claim;

604 (4) Be signed by the creditor under penalty of perjury;

605 and

606 (5) Include a copy of any record on which the claim is  
607 based.



608 (d) An assignment by a creditor of a claim against the owner  
609 is effective against the receiver only if the assignee gives  
610 timely notice of the assignment to the receiver in a signed  
611 record.

612 (e) At any time before entry of an order approving a  
613 receiver's final report, the receiver may file with the court an  
614 objection to a claim of a creditor, stating the basis for the  
615 objection. The court shall allow or disallow the claim according  
616 to law of this state other than this act.

617 (f) If the court concludes that receivership property is  
618 likely to be insufficient to satisfy claims of each creditor  
619 holding a perfected lien on the property, the court may order  
620 that:

621 (1) The receiver need not give notice under subsection  
622 (a) of the appointment to all creditors of the owner, but only  
623 such creditors as the court directs; and

624 (2) Unsecured creditors need not submit claims under  
625 this section.

626 (g) Subject to Section 21:

627 (1) A distribution of receivership property to a  
628 creditor holding a perfected lien on the property must be made in  
629 accordance with the creditor's priority under law of this state  
630 other than this act; and



631 (2) A distribution of receivership property to a  
632 creditor with an allowed unsecured claim must be made as the court  
633 directs according to law of this state other than this act.

634 **SECTION 21. FEES AND EXPENSES.** (a) The court may award a  
635 receiver from receivership property the reasonable and necessary  
636 fees and expenses of performing the duties of the receiver and  
637 exercising the powers of the receiver.

638 (b) The court may order one or more of the following to pay  
639 the reasonable and necessary fees and expenses of the  
640 receivership, including reasonable attorney's fees and costs:

641 (1) A person that requested the appointment of the  
642 receiver, if the receivership does not produce sufficient funds to  
643 pay the fees and expenses; or

644 (2) A person whose conduct justified or would have  
645 justified the appointment of the receiver under Section 6(a)(1).

646 **SECTION 22. REMOVAL OF RECEIVER; REPLACEMENT; TERMINATION OF**  
647 **RECEIVERSHIP.** (a) The court may remove a receiver for cause.

648 (b) The court shall replace a receiver that dies, resigns,  
649 or is removed.

650 (c) If the court finds that a receiver that resigns or is  
651 removed, or the representative of a receiver that is deceased, has  
652 accounted fully for and turned over to the successor receiver all  
653 receivership property and has filed a report of all receipts and  
654 disbursements during the service of the replaced receiver, the  
655 replaced receiver is discharged.



656 (d) The court may discharge a receiver and terminate the  
657 court's administration of the receivership property if the court  
658 finds that appointment of the receiver was improvident or that the  
659 circumstances no longer warrant continuation of the receivership.  
660 If the court finds that the appointment was sought wrongfully or  
661 in bad faith, the court may assess against the person that sought  
662 the appointment:

663 (1) The fees and expenses of the receivership,  
664 including reasonable attorney's fees and costs; and

665 (2) Actual damages caused by the appointment, including  
666 reasonable attorney's fees and costs.

667 **SECTION 23. FINAL REPORT OF RECEIVER; DISCHARGE.** (a) On  
668 completion of a receiver's duties, the receiver shall file a final  
669 report including:

670 (1) A description of the activities of the receiver in  
671 the conduct of the receivership;

672 (2) A list of receivership property at the commencement  
673 of the receivership and any receivership property received during  
674 the receivership;

675 (3) A list of disbursements, including payments to  
676 professionals engaged by the receiver;

677 (4) A list of dispositions of receivership property;

678 (5) A list of distributions made or proposed to be made  
679 from the receivership for creditor claims;



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

682 (7) Any other information required by the court.

683 (b) If the court approves a final report filed under  
684 subsection (a) and the receiver distributes all receivership  
685 property, the receiver is discharged.

686 **SECTION 24. RECEIVERSHIP IN ANOTHER STATE; ANCILLARY**

687 **PROCEEDING.** (a) The court may appoint a receiver appointed in  
688 another state, or that person's nominee, as an ancillary receiver  
689 with respect to property located in this state or subject to the  
690 jurisdiction of the court for which a receiver could be appointed  
691 under this act, if:

692 (1) The person or nominee would be eligible to serve as  
693 receiver under Section 7; and

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

697 (b) The court may issue an order that gives effect to an  
698 order entered in another state appointing or directing a receiver.

699 (c) Unless the court orders otherwise, an ancillary receiver  
700 appointed under subsection (a) has the rights, powers, and duties  
701 of a receiver appointed under this act.

702 **SECTION 25. EFFECT OF ENFORCEMENT BY MORTGAGEE.** A request  
703 by a mortgagee for appointment of a receiver, the appointment of a



704 receiver, or application by a mortgagee of receivership property  
705 or proceeds to the secured obligation does not:

706 (1) Make the mortgagee a mortgagee in possession of the  
707 real property;

708 (2) Make the mortgagee an agent of the owner;

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

711 (4) Make the secured obligation unenforceable; or

712 (5) Limit any right available to the mortgagee with  
713 respect to the secured obligation.

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

718 **SECTION 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
719 **NATIONAL COMMERCE ACT.** This act modifies, limits, or supersedes  
720 the Electronic Signatures in Global and National Commerce Act, 15  
721 U.S.C. Section 7001 et seq., but does not modify, limit, or  
722 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c),  
723 or authorize electronic delivery of any of the notices described  
724 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

725 **SECTION 28. TRANSITION.** This act does not apply to a  
726 receivership for which the receiver was appointed before the  
727 effective date of this act.



728           **SECTION 29.** This act shall take effect and be in force from  
729 and after July 1, 2016.

