

HB350 ENGROSSED



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A BILL
TO BE ENTITLED
AN ACT

To create the Alabama Uniform Commercial Real Estate Receivership Act; to establish uniform requirements and the authority of a receiver appointed by a court for the management of commercial real estate during certain matters pending before the court; to provide definitions; to provide for notice and an opportunity for a hearing; to provide for scope and exclusions; to provide for the power of the courts; to provide for the appointment of a receiver, for disqualification from appointment as a receiver, and the disclosure of any interest; to provide for bond and alternative security; to provide for the status of receiver as a lien creditor; to provide for the creating of a security agreement covering after-acquired property; to provide for the collection and turnover of receivership property; to provide for the powers and duties of the receiver; to provide for the duties of the owner and mortgagor; to provide for the use or a stay of other actions and an injunction; to provide for the engagement and compensation of other professionals; to provide for the use or transfer of receivership property not in the ordinary course of business; to provide for the creation of an



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29 executory contract; to provide for defenses and immunities of
30 the receiver and for an interim report of the receiver; to
31 provide for notice of appointment, claims against the
32 receivership, and the distribution to creditors; to provide
33 for fees and expenses; to provide for the removal of the
34 receiver and the replacement and termination of the
35 receivership; to provide for the final report of the receiver
36 and for the discharge of the receiver; to provide for a
37 receivership in another state and ancillary reporting; to
38 provide an effect of enforcement by a mortgagee; to provide
39 for uniformity of application and construction; and to provide
40 for transition.

41 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

42 Section 1. Short title.

43 This act shall be known and may be cited as the Alabama
44 Uniform Commercial Real Estate Receivership Act.

45 Section 2. Definitions.

46 For the purposes of this act, the following terms have
47 the following meanings:

48 (1) AFFILIATE. a. With respect to an individual:

49 1. A companion of the individual;

50 2. A lineal ancestor or descendant, whether by blood or
51 adoption, of either of the following:

52 (i) The individual.

53 (ii) A companion of the individual;

54 3. A companion of an ancestor or descendant described
55 in subparagraph 2.;

56 4. A sibling, aunt, uncle, great aunt, great uncle,



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57 first cousin, niece, nephew, grandniece, or grandnephew of the
58 individual, whether related by the whole or the half blood or
59 adoption, or a companion of any of them; or

60 5. Any other individual occupying the residence of the
61 individual.

62 b. With respect to a person other than an individual:

63 1. Another person that directly or indirectly controls,
64 is controlled by, or is under common control with the person;

65 2. An officer, director, manager, member, partner,
66 employee, or trustee or other fiduciary of the person; or

67 3. A companion of, or an individual occupying the
68 residence of, an individual described in subparagraph 1. or 2.

69 (2) COMPANION. Includes, but is not limited to, the
70 spouse or romantic partner of an individual.

71 (3) COURT. A circuit court of this state as well as a
72 federal court exercising jurisdiction over claims arising
73 under this act.

74 (4) DISCHARGE. The removal or termination of the
75 receiver's obligations to possess, manage, preserve, or
76 administer the receivership property, or any combination of
77 the foregoing.

78 (5) EXECUTORY CONTRACT. A contract, including a lease,
79 under which each party has an unperformed obligation and the
80 failure of a party to complete performance would constitute a
81 material breach.

82 (6) GOVERNMENTAL UNIT. An office, department, division,
83 bureau, board, commission, or other agency of this state or a
84 subdivision of this state.



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85 (7) INTERESTED PARTY. Any mortgagee, mortgagor, owner,
86 professional engaged pursuant to Section 15, claimant pursuant
87 to Section 20, or any person having an enforceable right or
88 claim which may be affected by the proceeding. The term as it
89 relates to particular persons may vary from time to time and
90 must be determined according to the particular purposes of,
91 and matter involved in, any proceeding.

92 (8) LIEN. An interest in property which secures payment
93 or performance of an obligation.

94 (9) MORTGAGE. A record, however denominated, that
95 creates or provides for a consensual lien on real property or
96 rents, even if the record also creates or provides for a lien
97 on personal property.

98 (10) MORTGAGEE. A person entitled to enforce an
99 obligation secured by a mortgage.

100 (11) MORTGAGOR. A person that grants a mortgage or a
101 successor in ownership of the real property described in the
102 mortgage.

103 (12) OWNER. The person for whose property a receiver is
104 appointed.

105 (13) PERSON. An individual, estate, business or
106 nonprofit entity, public corporation, government or
107 governmental subdivision, agency, or instrumentality, or other
108 legal entity.

109 (14) PROCEEDS. Any of the following property:

110 a. Whatever is acquired on the sale, lease, license,
111 exchange, or other disposition of receivership property.

112 b. Whatever is collected on, or distributed on account



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113 of, receivership property.

114 c. Rights arising out of receivership property.

115 d. To the extent of the value of receivership property,
116 claims arising out of the loss, nonconformity, or interference
117 with the use of, defects or infringement of rights in, or
118 damage to the property.

119 e. To the extent of the value of receivership property
120 and to the extent payable to the owner or mortgagee, insurance
121 payable by reason of the loss or nonconformity of, defects or
122 infringement of rights in, or damage to the property.

123 (15) PROPERTY. All of a person's right, title, and
124 interest, both legal and equitable, in real and personal
125 property, tangible and intangible, wherever located and
126 however acquired. The term includes proceeds, products,
127 offspring, rents, or profits of or from the property.

128 (16) RECEIVER. A person appointed by the court as the
129 court's agent, and subject to the court's direction, to take
130 possession of, manage, and if authorized by this act or court
131 order, to transfer, sell, lease, license, exchange, collect,
132 or otherwise dispose of receivership property.

133 (17) RECEIVERSHIP. A proceeding in which a receiver is
134 appointed.

135 (18) RECEIVERSHIP PROPERTY. The property of an owner
136 which is described in the order appointing a receiver or a
137 subsequent order. The term includes any proceeds, products,
138 offspring, rents, or profits of or from the property.

139 (19) RECORD. When used as a noun, information that is
140 inscribed on a tangible medium or that is stored on an



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141 electronic or other medium and is retrievable in perceivable
142 form.

143 (20) RENTS. Any of the following:

144 a. Sums payable for the right to possess or occupy, or
145 for the actual possession or occupation of, real property of
146 another person.

147 b. Sums payable to a mortgagor under a policy of
148 rental-interruption insurance covering real property.

149 c. Claims arising out of a default in the payment of
150 sums payable for the right to possess or occupy real property
151 of another person.

152 d. Sums payable to terminate an agreement to possess or
153 occupy real property of another person.

154 e. Sums payable to a mortgagor for payment or
155 reimbursement of expenses incurred in owning, operating, and
156 maintaining real property or incurred in constructing or
157 installing improvements on real property.

158 f. Other sums payable under an agreement relating to
159 the real property of another person which constitute rents
160 under the law of this state other than this act.

161 (21) SECURED OBLIGATION. An obligation the payment or
162 performance of which is secured by a security agreement.

163 (22) SECURITY AGREEMENT. An agreement that creates or
164 provides for a lien.

165 (23) SIGN. Either of the following, with present intent
166 to authenticate or adopt a record:

167 a. To execute or adopt a tangible symbol.

168 b. To attach to or logically associate with the record



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169 an electronic sound, symbol, or process.

170 (24) STATE. A state of the United States, the District
171 of Columbia, Puerto Rico, the United States Virgin Islands, or
172 any territory or insular possession subject to the
173 jurisdiction of the United States.

174 Section 3. Notice and opportunity for hearing.

175 (a) Except as otherwise provided in subsection (b), the
176 court may issue an order under this act only after notice and
177 opportunity for a hearing appropriate in the circumstances.

178 (b) The court may issue a preliminary order under this
179 act in any of the following circumstances:

180 (1) Without prior notice if the circumstances require
181 issuance of an order before notice is given.

182 (2) After notice and without a prior hearing if the
183 circumstances require issuance of an order before a hearing is
184 held.

185 (3) After notice and without a hearing, provided the
186 court finds that the administration of justice will be
187 preserved without a hearing.

188 (c) Upon request by an interested party for rehearing
189 of a preliminary order entered under subdivision (b)(1) or
190 (b)(2), the court shall schedule a hearing to make the order
191 final and in compliance with subsection (a).

192 Section 4. Scope; exclusions.

193 (a) Except as otherwise provided in subsection (b) or
194 (c), this act applies to a receivership for an interest in
195 real property and any personal property related to or used in
196 operating the real property.



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

200 (1) The interest is used for agricultural, commercial,
201 industrial, or mineral extraction purposes, other than
202 incidental uses by an owner occupying the property as the
203 owner's primary residence;

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

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

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

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

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

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

224 Section 5. Jurisdiction and venue.



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225 (a) The court that appoints a receiver under this act
226 has statewide exclusive original jurisdiction, pursuant to
227 Section 12-11-30, Code of Alabama 1975, to direct the receiver
228 and determine any controversy related to the receivership or
229 receivership property.

230 (b) Venue for any actions filed pursuant to this act
231 shall be proper in any county where a substantial portion of
232 the receivership property is located.

233 Section 6. Appointment of receiver.

234 (a) The court may appoint a receiver:

235 (1) Before judgment, to protect a party that
236 demonstrates an apparent right, title, or interest in real
237 property that is the subject of the action, if any or all of
238 the property, its revenues, its rents, or its proceeds:

239 a. Is being subjected to or is in danger of waste,
240 loss, dissipation, or impairment; or

241 b. Has been or is about to be the subject of a voidable
242 transaction;

243 (2) After judgment:

244 a. To carry the judgment into effect; or

245 b. To preserve nonexempt real property pending appeal
246 or when an execution has been returned unsatisfied and the
247 owner refuses to apply the property in satisfaction of the
248 judgment; or

249 (3) In an action in which a receiver for real property
250 may be appointed on equitable grounds.

251 (b) In connection with the foreclosure or other
252 enforcement of a mortgage, the court may appoint a receiver



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253 for the mortgaged property. The court shall consider all of
254 the following facts and circumstances, together with any other
255 relevant facts in deciding whether to appoint a receiver for
256 the mortgaged property:

257 (1) Appointment is necessary to protect the property
258 from waste, loss, transfer, dissipation, or impairment.

259 (2) The mortgagor agreed in a signed record to
260 appointment of a receiver on default.

261 (3) The owner agreed, after default and in a signed
262 record, to appointment of a receiver.

263 (4) The property and any other collateral held by the
264 mortgagee are not sufficient to satisfy the secured
265 obligation.

266 (5) The owner fails to turn over to the mortgagee
267 proceeds or rents the mortgagee was entitled to collect.

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

270 (c) The court may condition appointment of a receiver
271 without prior notice or hearing under Section 3(b)(1) or
272 3(b)(2) on the giving of security by the person seeking the
273 appointment for the payment of damages, reasonable attorney
274 fees, and costs incurred or suffered by any person if the
275 court later concludes that the appointment was not justified.
276 If the court later concludes that the appointment was
277 justified, the court shall release the security. Provided,
278 however, no security shall be required of this state or of an
279 officer or agency of this state.

280 Section 7. Disqualification from appointment as



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281 receiver; disclosure of interest.

282 (a) The court may not appoint a person as receiver
283 unless the person submits to the court a statement under
284 penalty of perjury that the person is not disqualified.

285 (b) Except as otherwise provided in subsection (c), a
286 person is disqualified from appointment as receiver if the
287 person satisfies any of the following:

288 (1) Is an affiliate of a party.

289 (2) Has an interest materially adverse to an interest
290 of a party.

291 (3) Has a material financial interest in the outcome of
292 the action, other than compensation the court may allow the
293 receiver.

294 (4) Has a debtor-creditor relationship with a party.

295 (5) Holds an equity interest in a party, other than a
296 noncontrolling interest in a publicly traded company.

297 (c) A person is not disqualified from appointment as
298 receiver solely because the person satisfies any of the
299 following:

300 (1) Was appointed receiver or is owed compensation in
301 an unrelated matter involving a party or was engaged by a
302 party in a matter unrelated to the receivership.

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

306 (3) Maintains with a party a deposit account as defined
307 in Section 7-9A-102(a), Code of Alabama 1975.

308 (d) A person seeking appointment of a receiver may



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309 nominate a person to serve as receiver, but the court is not
310 bound by the nomination.

311 Section 8. Receiver's bond; alternative security.

312 (a) Except as otherwise provided in subsection (b), a
313 receiver shall post with the court a bond that satisfies all
314 of the following:

315 (1) Is conditioned on the faithful undertaking of the
316 receiver's duties.

317 (2) Has one or more sureties approved by the court.

318 (3) Is in an amount the court specifies.

319 (4) Is effective as of the date of the receiver's
320 appointment.

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

327 (c) The court may authorize a receiver to act before
328 the receiver posts the bond or alternative security required
329 by this section.

330 (d) A claim against a receiver's bond or alternative
331 security must be made not later than the date the receiver is
332 discharged.

333 Section 9. Status of receiver.

334 (a) On appointment of a receiver, the receiver has the
335 status of a lien creditor under Article 9A of Title 7, Code of
336 Alabama 1975, as to receivership property that is personal



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337 property or fixtures.

338 (b) On appointment of a receiver, the receiver has the
339 status of a purchaser for value and without notice under
340 Section 35-4-90(a), Code of Alabama 1975, as to receivership
341 property that is real property.

342 Section 10. Security agreement covering after-acquired
343 property.

344 Except as otherwise provided by the law of this state
345 other than this act, property that a receiver or owner
346 acquires after appointment of the receiver is subject to a
347 security agreement entered into before the appointment to the
348 same extent as if the court had not appointed the receiver.

349 Section 11. Collection and turnover of receivership
350 property.

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

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

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

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

363 (c) If a creditor has possession, custody, or control
364 of receivership property and the validity, perfection, or



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365 priority of the creditor's lien on the property depends on the
366 creditor's possession, custody, or control, the creditor may
367 retain possession, custody, or control until the court orders
368 adequate protection of the creditor's lien.

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

374 Section 12. Powers and duties of receiver.

375 (a) Except as limited by court order or the law of this
376 state other than this act, a receiver may do any of the
377 following:

378 (1) Collect, control, manage, conserve, and protect
379 receivership property.

380 (2) Operate a business constituting receivership
381 property, including preservation, use, sale, lease, license,
382 exchange, collection, or disposition of the property in the
383 ordinary course of business.

384 (3) In the ordinary course of business, incur unsecured
385 debt and pay expenses incidental to the receiver's
386 preservation, use, sale, lease, license, exchange, collection,
387 or disposition of receivership property.

388 (4) Assert a right, claim, cause of action, or defense
389 of the owner which relates to receivership property.

390 (5) Seek and obtain instruction from the court
391 concerning receivership property, exercise of the receiver's
392 powers, and performance of the receiver's duties.



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393 (6) Upon subpoena, compel a person to submit to
394 examination under oath, or to produce and permit inspection
395 and copying of designated records or tangible things, with
396 respect to receivership property or any other matter that may
397 affect administration of the receivership.

398 (7) Engage a professional as provided in Section 15.

399 (8) Apply to a court of another state for appointment
400 as ancillary receiver with respect to receivership property
401 located in that state.

402 (9) Exercise any power conferred by court order, this
403 act, or the laws of this state other than this act.

404 (b) With court approval, a receiver may do any of the
405 following:

406 (1) Incur debt for the use or benefit of receivership
407 property other than in the ordinary course of business.

408 (2) Make improvements to receivership property.

409 (3) Use or transfer receivership property other than in
410 the ordinary course of business as provided in Section 16.

411 (4) Adopt or reject an executory contract of the owner
412 as provided in Section 17.

413 (5) Pay compensation to the receiver as provided in
414 Section 21, and to each professional engaged by the receiver
415 as provided in Section 15.

416 (6) Recommend allowance or disallowance of a claim of a
417 creditor as provided in Section 20.

418 (7) Make a distribution of receivership property as
419 provided in Section 20.

420 (c) A receiver shall do all of the following:



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421 (1) Prepare and retain appropriate business records,
422 including a record of each receipt, disbursement, and
423 disposition of receivership property.

424 (2) Account for receivership property, including the
425 proceeds of a sale, lease, license, exchange, collection, or
426 other disposition of the property.

427 (3) File with the appropriate probate court for
428 recording a copy of the order appointing the receiver and, if
429 a legal description of the real property is not included in
430 the order, the legal description.

431 (4) Disclose to the court any fact arising during the
432 receivership which would disqualify the receiver under Section
433 7.

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

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

438 Section 13. Duties of owner and mortgagor.

439 (a) An owner and a mortgagor shall do all of the
440 following:

441 (1) Preserve and turn over to the receiver all
442 receivership property in the owner's possession, custody, or
443 control.

444 (2) Identify all records and other information relating
445 to the receivership property, including a password,
446 authorization, or other information needed to obtain or
447 maintain access to or control of the receivership property,
448 and make available to the receiver the records and information



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449 in the owner's possession, custody, or control.

450 (3) On subpoena, submit to examination under oath by
451 the receiver concerning the acts, conduct, property,
452 liabilities, and financial condition of the owner or any
453 matter relating to the receivership property or the
454 receivership.

455 (4) Perform any duty imposed by court order, this act,
456 or law of this state other than this act.

457 (5) Assist and cooperate with the receiver in the
458 administration of the receivership and the undertaking of the
459 receiver's duties in accordance with the intent of this
460 subsection.

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

465 (c) If a person knowingly fails to perform a duty
466 imposed by this section, the court may do any of the
467 following:

468 (1) Award the receiver actual damages caused by the
469 person's failure, reasonable attorney fees, and costs.

470 (2) Sanction the failure as civil contempt.

471 Section 14. Stay; injunction.

472 (a) Except as otherwise provided in subsection (d) or
473 ordered by the court, upon the earlier of: (1) recording of
474 the receivership order pursuant to Section 12(c)(3); or (2)
475 receipt of actual knowledge of the appointment of a receiver,
476 an order appointing a receiver operates as a stay, applicable



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477 to all persons, of an act, action, or proceeding:

478 a. To obtain possession of, exercise control over, or
479 enforce a judgment against receivership property; and

480 b. To enforce a lien against receivership property to
481 the extent the lien secures a claim against the owner which
482 arose before entry of the order.

483 (b) Except as otherwise provided in subsection (d), the
484 court may enjoin an act, action, or proceeding against or
485 relating to receivership property if the injunction is
486 necessary to protect the property or facilitate administration
487 of the receivership.

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

491 (d) An order under subsection (a) or (b) does not
492 operate as a stay or injunction of any of the following:

493 (1) An act, action, or proceeding to foreclose or
494 otherwise enforce a mortgage by a party holding a senior lien
495 to the person seeking appointment of the receiver.

496 (2) An act, action, or proceeding to foreclose or
497 otherwise enforce a mortgage by the person seeking appointment
498 of the receiver.

499 (3) An act, action, or proceeding to perfect, or
500 maintain or continue the perfection of, an interest in
501 receivership property.

502 (4) Commencement or continuation of a criminal
503 proceeding.

504 (5) Commencement or continuation of an action or



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505 proceeding, or enforcement of a judgment other than a money
506 judgment in an action or proceeding, by a governmental unit to
507 enforce its police or regulatory power.

508 (6) Establishment by a governmental unit of a tax
509 liability against the owner or receivership property or an
510 appeal of the liability.

511 (e) The court may void any act that violates a stay or
512 injunction under this section.

513 (f) If a person knowingly violates a stay or injunction
514 under this section, the court may do any of the following:

515 (1) Award actual damages caused by the violation,
516 reasonable attorney fees, and costs.

517 (2) Sanction the violation as civil contempt.

518 Section 15. Engagement and compensation of
519 professional.

520 (a) With court approval, a receiver may engage an
521 attorney, accountant, appraiser, auctioneer, broker, or other
522 professional to assist the receiver in performing a duty or
523 exercising a power of the receiver. The receiver shall
524 disclose to the court all of the following:

525 (1) The identity and qualifications of the
526 professional.

527 (2) The scope and nature of the proposed engagement.

528 (3) Any potential conflict of interest.

529 (4) The proposed compensation.

530 (b) A person is not disqualified from engagement under
531 this section solely because of the person's engagement by,
532 representation of, or other relationship with the receiver, a



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533 creditor, or a party. This act does not prevent the receiver
534 from serving in the receivership as an attorney, accountant,
535 auctioneer, or broker when authorized by law.

536 (c) A receiver or professional engaged under subsection
537 (a) shall file with the court an itemized statement of the
538 time spent, work performed, and billing rate of each person
539 that performed the work and an itemized list of expenses. The
540 receiver shall pay the amount approved by the court or pay
541 amounts otherwise allowed by the court.

542 Section 16. Use or transfer of receivership property
543 not in ordinary course of business.

544 (a) In this section, "good faith" means honesty in fact
545 in the conduct or transaction concerned.

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

549 (c) With court approval, a receiver may transfer
550 receivership property other than in the ordinary course of
551 business by sale, lease, license, exchange, or other
552 disposition. Unless the agreement of sale provides otherwise,
553 a sale under this section is free and clear of a lien of the
554 person that obtained appointment of the receiver, any
555 subordinate lien, and any right of redemption but is subject
556 to a senior lien.

557 (d) A lien on receivership property which is
558 extinguished by a transfer under subsection (c) attaches to
559 the proceeds of the transfer with the same validity,
560 perfection, and priority the lien had on the property



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561 immediately before the transfer, even if the proceeds are not
562 sufficient to satisfy all obligations secured by the lien.

563 (e) A transfer under subsection (c) may occur by means
564 other than a public auction sale. A creditor holding a valid
565 lien on the property to be transferred may purchase the
566 property and offset against the purchase price part or all of
567 the allowed amount secured by the lien, if the creditor
568 tenders funds sufficient to satisfy in full the reasonable
569 expenses of transfer and the obligation secured by any senior
570 lien extinguished by the transfer.

571 (f) A reversal or modification of an order approving a
572 transfer under subsection (c) does not affect the validity of
573 the transfer to a person that acquired the property in good
574 faith nor revive against the person any lien extinguished by
575 the transfer, whether the person knew before the transfer of
576 the request for reversal or modification, unless the court
577 stayed the order before the transfer.

578 Section 17. Executory contract.

579 (a) In this section, "timeshare interest" means an
580 interest having a duration of more than three years which
581 grants its holder the right to use and occupy an
582 accommodation, facility, or recreational site, whether
583 improved or not, for a specific period less than a full year
584 during any given year.

585 (b) Except as otherwise provided in subsection (h),
586 with court approval, a receiver may adopt or reject an
587 executory contract of the owner relating to receivership
588 property. The court may condition the receiver's adoption and



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589 continued performance of the contract on terms appropriate
590 under the circumstances. If the receiver does not request
591 court approval to adopt or reject the contract within a
592 reasonable time after the receiver's appointment or discovery
593 of the executory contract, the receiver is deemed to have not
594 rejected the contract.

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

600 (d) A provision in an executory contract which requires
601 or permits a forfeiture, modification, or termination of the
602 contract because of the appointment of a receiver or the
603 financial condition of the owner does not affect a receiver's
604 power under subsection (b) to adopt the contract.

605 (e) A receiver's right to possess or use receivership
606 property pursuant to an executory contract terminates on
607 rejection of the contract under subsection (b). Rejection is a
608 breach of the contract effective immediately before
609 appointment of the receiver. A claim for damages for rejection
610 of the contract must be submitted by the later of:

611 (1) The time set for submitting a claim in the
612 receivership; or

613 (2) Thirty days after the court approves the rejection.

614 (f) If at the time a receiver is appointed, the owner
615 has the right to assign an executory contract relating to
616 receivership property under the law of this state other than



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617 this act, the receiver may assign the contract with court
618 approval.

619 (g) If a receiver rejects under subsection (b) an
620 executory contract for the sale of receivership property that
621 is real property in possession of the purchaser or a real
622 property timeshare interest, the purchaser may do either of
623 the following:

624 (1) Treat the rejection as a termination of the
625 contract, and in that case the purchaser has a lien on the
626 property for the recovery of any part of the purchase price
627 the purchaser paid.

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

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

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

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

641 (3) The receiver was appointed at the request of a
642 mortgagee and any of the following are true or occur:

643 a. The lease is superior to the lien of the mortgage.

644 b. The tenant has an enforceable agreement with the



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645 mortgagee or the holder of a senior lien under which the
646 tenant's occupancy will not be disturbed as long as the tenant
647 performs its obligations under the lease.

648 c. The mortgagee has consented to the lease, either in
649 a signed record or by its failure to timely object that the
650 lease violated the mortgage.

651 d. The terms of the lease were commercially reasonable
652 at the time the lease was agreed to and the tenant did not
653 know or have reason to know that the lease violated the
654 mortgage.

655 Section 18. Defenses and immunities of the receiver.

656 A receiver is entitled to all defenses and immunities
657 provided by the law of this state other than this act for an
658 act or omission within the scope of the receiver's
659 appointment.

660 Section 19. Interim report of receiver.

661 A receiver may file or, if ordered by the court, shall
662 file an interim report that includes all of the following:

663 (1) The activities of the receiver since appointment or
664 a previous report.

665 (2) Receipts and disbursements, including a payment
666 made or proposed to be made to a professional engaged by the
667 receiver.

668 (3) Receipts and dispositions of receivership property.

669 (4) A request for, or demand for, payment of fees and
670 expenses of the receiver and, if not filed separately, a
671 request for approval of payment of the fees and expenses.

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



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673 Section 20. Notice of appointment; claim against
674 receivership; distribution to creditors.

675 (a) Except as otherwise provided in subsection (f), a
676 receiver shall give notice of appointment of the receiver to
677 creditors of the owner by both of the following:

678 (1) First-class mail addressed to the last known
679 address of the creditor, or by other mechanism reasonably
680 calculated to provide actual notice, to all creditors with
681 claims against the receivership property who are known or
682 reasonably ascertainable by the receiver within 30 days after
683 appointment.

684 (2) Publishing a notice once a week for three
685 successive weeks in a newspaper of general circulation
686 published in the county in which the receiver was appointed,
687 or if none is published in the county, in the one published
688 nearest to the courthouse thereof or in an adjoining county.

689 (b) Except as otherwise provided in subsection (f), the
690 notice required by subsection (a) must specify the date by
691 which each creditor holding a claim against the owner which
692 arose before appointment of the receiver must submit the claim
693 to the receiver. The date specified must be at least 90 days
694 after the later of notice under subdivision (a)(1) or last
695 publication under subdivision (a)(2). The court may extend the
696 period for submitting the claim. Unless the court orders
697 otherwise, a claim that is not submitted timely is not
698 entitled to a distribution from the receivership.

699 (c) A claim submitted by a creditor under this section
700 must satisfy all of the following:



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- 701 (1) State the name and address of the creditor.
702 (2) State the amount and basis of the claim.
703 (3) Identify any property securing the claim.
704 (4) Be signed by the creditor under penalty of perjury.
705 (5) Include a copy of any record on which the claim is
706 based.

707 (d) An assignment by a creditor of a claim against the
708 owner is effective against the receiver only if the assignee
709 gives timely notice of the assignment to the receiver in a
710 signed record.

711 (e) At any time before entry of an order approving a
712 receiver's final report, the receiver or any interested party
713 may file with the court an objection to a claim of a creditor
714 stating the basis for the objection. The court shall allow or
715 disallow the claim according to the law of this state other
716 than this act.

717 (f) If the court concludes that receivership property
718 is likely to be insufficient to satisfy claims of each
719 creditor holding a perfected lien on the property, the court
720 may order both of the following:

721 (1) That the receiver need not give notice under
722 subsection (a) of the appointment to all creditors of the
723 owner, but only to such creditors as the court directs.

724 (2) That unsecured creditors need not submit claims
725 under this section.

726 (g) Subject to Section 21:

727 (1) A distribution of receivership property to a
728 creditor holding a perfected lien on the property must be made



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729 in accordance with the creditor's priority under the law of
730 this state other than this act; and

731 (2) A distribution of receivership property to a
732 creditor with an allowed unsecured claim must be made as the
733 court directs according to the law of this state other than
734 this act, pro rata as to the allowed amount.

735 Section 21. Fees and expenses.

736 (a) The court may award a receiver from receivership
737 property the reasonable and necessary fees and expenses of
738 performing the duties of the receiver and exercising the
739 powers of the receiver.

740 (b) The court may order one or more of the following to
741 pay the reasonable and necessary fees and expenses of the
742 receivership, including reasonable attorney fees and costs:

743 (1) A person that requested the appointment of the
744 receiver, if the receivership does not produce sufficient
745 funds to pay the fees and expenses.

746 (2) A person whose conduct justified or would have
747 justified the appointment of the receiver under Section
748 6(a)(1).

749 Section 22. Removal of receiver; replacement;
750 termination of receivership.

751 (a) The court may remove a receiver for cause.

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

754 (c) If the court finds that a receiver that resigns or
755 is removed or the representative of a receiver that is
756 deceased has accounted fully for and turned over to the



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757 successor receiver all receivership property and has filed a
758 report of all receipts and disbursements during the service of
759 the replaced receiver, the replaced receiver is discharged.

760 (d) The court may discharge a receiver and terminate
761 the court's administration of the receivership property if the
762 court finds that appointment of the receiver was improvident
763 or that the circumstances no longer warrant continuation of
764 the receivership. If the court finds that the appointment was
765 sought in bad faith, the court may assess both of the
766 following against the person that sought the appointment:

767 (1) The fees and expenses of the receivership,
768 including reasonable attorney fees and costs.

769 (2) Actual damages caused by the appointment, including
770 reasonable attorney fees and costs.

771 Section 23. Final report of receiver; discharge.

772 (a) If required by the court, on completion of a
773 receiver's duties the receiver shall file a final report
774 including all of the following:

775 (1) A description of the activities of the receiver in
776 the conduct of the receivership.

777 (2) A list of receivership property at the commencement
778 of the receivership and any receivership property received
779 during the receivership.

780 (3) A list of disbursements, including payments to
781 professionals engaged by the receiver.

782 (4) A list of dispositions of receivership property.

783 (5) A list of distributions made or proposed to be made
784 from the receivership for creditor claims.



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785 (6) If not filed separately, a request for approval of
786 the payment of fees and expenses of the receiver.

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

788 (b) If the court requires a final report, the receiver
789 is discharged when the court approves the final report filed
790 under subsection (a) and the receiver distributes all
791 receivership property.

792 (c) If the court does not require a final report, the
793 receiver is discharged upon distribution of all receivership
794 property.

795 Section 24. Receivership in another state; ancillary
796 proceeding.

797 (a) The court may appoint a receiver appointed in
798 another state, or that person's nominee, as an ancillary
799 receiver with respect to property located in this state or
800 subject to the jurisdiction of the court for which a receiver
801 could be appointed under this act, if:

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

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

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

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



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813 Section 25. Effect of enforcement by mortgagee.

814 A request by a mortgagee for appointment of a receiver,
815 the appointment of a receiver, or application by a mortgagee
816 of receivership property or proceeds to the secured obligation
817 does not do any of the following:

818 (1) Make the mortgagee a mortgagee in possession of the
819 real property.

820 (2) Make:

821 a. The mortgagee an agent of the owner, receiver, or
822 mortgagor;

823 b. The owner an agent of the mortgagee, receiver, or
824 mortgagor;

825 c. The receiver an agent of the mortgagee, owner, or
826 mortgagor; or

827 d. The mortgagor an agent of the owner, mortgagee, or
828 receiver.

829 (3) Constitute an election of remedies that precludes a
830 later action to enforce the secured obligation.

831 (4) Make the secured obligation unenforceable.

832 (5) Limit any right available to the mortgagee with
833 respect to the secured obligation.

834 Section 26. Uniformity of application and construction.

835 In applying and construing this uniform act,
836 consideration must be given to the need to promote uniformity
837 of the law with respect to its subject matter among states
838 that enact it.

839 Section 27. Relation to Electronic Signatures in Global
840 and National Commerce Act; and Relation to Condemnation



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841 Proceedings.

842 (a) This act modifies, limits, or supersedes the
843 Electronic Signatures in Global and National Commerce Act, 15
844 U.S.C. §7001 et seq., but does not modify, limit, or supersede
845 Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize
846 electronic delivery of any of the notices described in Section
847 103(b) of that act, 15 U.S.C. §7003(b).

848 (b) Notwithstanding any provision to the contrary, this
849 act shall have no effect on any condemnation action or
850 proceeding to acquire for public use all or any portion or
851 interest in the receivership property, whether filed before or
852 after the receivership. The receivership court may not stay or
853 enjoin any condemnation action involving the receivership
854 property, nor shall the receivership court have jurisdiction
855 over any action to condemn the receivership property. The
856 receiver may negotiate to settle any condemnation action
857 involving the receivership property, and may convey to the
858 condemning authority the property or interest therein sought
859 to be condemned. The receiver may be named as a defendant in
860 any eminent domain or condemnation action involving the
861 receivership property.

862 Section 28. Transition.

863 This act does not apply to a receivership for which the
864 receiver was appointed before January 1, 2025.

865 Section 29. This act shall become effective on January
866 1, 2025.

