



General Assembly

January Session, 2019

## ***Substitute Bill No. 7271***



### ***AN ACT CONCERNING THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2019*) Sections 1 to 28,  
2       inclusive, of this act, may be cited as the Uniform Commercial Real  
3       Estate Receivership Act.

4       Sec. 2. (NEW) (*Effective October 1, 2019*) As used in sections 1 to 28,  
5       inclusive, of this act:

6       (1) "Affiliate" means:

7       (A) With respect to an individual:

8       (i) A companion of the individual;

9       (ii) A lineal ancestor or descendant, whether by blood or adoption,  
10      of (I) the individual; or (II) a companion of the individual;

11      (iii) A companion of an ancestor or descendant described in  
12      subparagraph (A)(ii) of this subdivision;

13      (iv) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece,  
14      nephew, grandniece or grandnephew of the individual, whether  
15      related by the whole or the half blood or adoption, or a companion of  
16      any of them; or

17 (v) Any other individual occupying the residence of the individual;  
18 and

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

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

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

24 (iii) A companion of, or an individual occupying the residence of, an  
25 individual described in subparagraph (B)(i) or (B)(ii) of this  
26 subdivision.

27 (2) "Companion" means the spouse of an individual.

28 (3) "Court" means the Superior Court.

29 (4) "Executory contract" means a contract, including a lease, under  
30 which each party has an unperformed obligation and the failure of a  
31 party to complete performance would constitute a material breach.

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

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

37 (7) "Mortgage" means a record, however denominated, that creates  
38 or provides for a consensual lien on real property or rents, even if the  
39 record also creates or provides for a lien on personal property.

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

42 (9) "Mortgagor" means a person that grants a mortgage or a

43 successor in ownership of the real property described in the mortgage.

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

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

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

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

52 (B) Whatever is collected on, or distributed on account of,  
53 receivership property;

54 (C) Rights arising out of receivership property;

55 (D) To the extent of the value of receivership property, claims  
56 arising out of the loss, nonconformity or interference with the use of,  
57 defects or infringement of rights in, or damage to, the property; or

58 (E) To the extent of the value of receivership property and to the  
59 extent payable to the owner or mortgagee, insurance payable by  
60 reason of the loss or nonconformity of, defects or infringement of  
61 rights in, or damage to, the property.

62 (13) "Property" means all of a person's right, title and interest, both  
63 legal and equitable, in real and personal property, tangible and  
64 intangible, wherever located and however acquired. "Property"  
65 includes proceeds, products, offspring, rents or profits of or from the  
66 property.

67 (14) "Receiver" means a person appointed by the court as the court's  
68 agent, and subject to the court's direction, to take possession of,  
69 manage and, if authorized by sections 1 to 28, inclusive, of this act or  
70 court order, transfer, sell, lease, license, exchange, collect or otherwise

71 dispose of receivership property.

72 (15) "Receivership" means a proceeding in which a receiver is  
73 appointed.

74 (16) "Receivership property" means the property of an owner which  
75 is described in the order appointing a receiver or a subsequent order.  
76 "Receivership property" includes any proceeds, products, offspring,  
77 rents or profits of or from the property.

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

81 (18) "Rents" means:

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

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

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

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

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

93 (F) Other sums payable under an agreement relating to the real  
94 property of another person which constitute rents under the law of this  
95 state other than sections 1 to 28, inclusive, of this act.

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

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

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

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

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

105       (22) "State" means a state of the United States, the District of  
106       Columbia, Puerto Rico, the United States Virgin Islands or any  
107       territory or insular possession subject to the jurisdiction of the United  
108       States.

109       Sec. 3. (NEW) (*Effective October 1, 2019*) (a) Except as otherwise  
110       provided in subsection (b) of this section, the court may issue an order  
111       under sections 1 to 28, inclusive, of this act only after notice and an  
112       opportunity for a hearing that the court deems appropriate in the  
113       circumstances.

114       (b) The court may issue an order under sections 1 to 28, inclusive, of  
115       this act:

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

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

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

122       Sec. 4. (NEW) (*Effective October 1, 2019*) (a) Except as otherwise  
123       provided in subsection (b) or (c) of this section, sections 1 to 28,  
124       inclusive, of this act apply to a receivership for an interest in real  
125       property and any personal property related to or used in operating the

126 real property.

127 (b) Sections 1 to 28, inclusive, of this act do not apply to a  
128 receivership for an interest in real property improved by one to four  
129 dwelling units unless:

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

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

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

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

142 (c) Sections 1 to 28, inclusive, of this act do not apply to a  
143 receivership authorized by the law of this state other than sections 1 to  
144 28, inclusive, of this act in which the receiver is a governmental unit or  
145 an individual acting in an official capacity on behalf of the  
146 governmental unit.

147 (d) Sections 1 to 28, inclusive, of this act do not limit the authority of  
148 a court to appoint a receiver under the law of this state other than  
149 sections 1 to 28, inclusive, of this act.

150 (e) Unless displaced by a particular provision of sections 1 to 28,  
151 inclusive, of this act, the principles of law and equity supplement  
152 sections 1 to 28, inclusive, of this act.

153 Sec. 5. (NEW) (*Effective October 1, 2019*) The court that appoints a

154 receiver under sections 1 to 28, inclusive, of this act has exclusive  
155 jurisdiction to direct the receiver and determine any controversy  
156 related to the receivership or receivership property.

157 Sec. 6. (NEW) (*Effective October 1, 2019*) (a) The court may appoint a  
158 receiver:

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

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

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

165 (2) After judgment:

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

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

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

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

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

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

179 (3) The owner agreed, after default and in a signed record, to

180 appointment of a receiver;

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

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

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

187 (c) The court may condition appointment of a receiver without prior  
188 notice under subdivision (1) of subsection (b) of section 3 of this act or  
189 without a prior hearing under subdivision (2) of subsection (b) of  
190 section 3 of this act on the giving of security by the person seeking the  
191 appointment for the payment of damages, reasonable attorneys' fees  
192 and costs incurred or suffered by any person if the court later  
193 concludes that the appointment was not justified. If the court later  
194 concludes that the appointment was justified, the court shall release  
195 the security.

196 Sec. 7. (NEW) (*Effective October 1, 2019*) (a) The court may not  
197 appoint a person as receiver unless the person submits to the court a  
198 statement under penalty of perjury that the person is not disqualified.

199 (b) Except as otherwise provided in subsection (c) of this section, a  
200 person is disqualified from appointment as receiver if the person:

201 (1) Is an affiliate of a party;

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

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

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

206 (5) Holds an equity interest in a party, other than a noncontrolling



207 interest in a publicly traded company.

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

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

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

216 (3) Maintains with a party a deposit account, as defined in  
217 subdivision (29) of subsection (a) of section 42a-9-102 of the general  
218 statutes.

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

222 Sec. 8. (NEW) (*Effective October 1, 2019*) (a) Except as otherwise  
223 provided in subsection (b) of this section, a receiver shall post with the  
224 court a bond that:

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

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

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

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

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

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

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

238 Sec. 9. (NEW) (*Effective October 1, 2019*) On appointment of a  
239 receiver, the receiver has the status of a lien creditor under:

240 (1) Article 9 of title 42a of the general statutes as to receivership  
241 property that is personal property or fixtures; and

242 (2) Any provision of the general statutes that provides for filing on  
243 the land records of a town a certificate as to receivership property that  
244 is real property.

245 Sec. 10. (NEW) (*Effective October 1, 2019*) Except as otherwise  
246 provided by the law of this state other than sections 1 to 28, inclusive,  
247 of this act, property that a receiver or owner acquires after  
248 appointment of the receiver is subject to a security agreement entered  
249 into before the appointment to the same extent as if the court had not  
250 appointed the receiver.

251 Sec. 11. (NEW) (*Effective October 1, 2019*) (a) Unless the court orders  
252 otherwise, on demand by a receiver:

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

257 (2) Subject to subsection (c) of this section, a person that has  
258 possession, custody or control of receivership property shall turn the  
259 property over to the receiver.

260 (b) A person that has notice of the appointment of a receiver and  
261 owes a debt that is receivership property may not satisfy the debt by

262 payment to the owner.

263 (c) If a creditor has possession, custody or control of receivership  
264 property and the validity, perfection or priority of the creditor's lien on  
265 the property depends on the creditor's possession, custody or control,  
266 the creditor may retain possession, custody or control until the court  
267 orders adequate protection of the creditor's lien.

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

272 Sec. 12. (NEW) (*Effective October 1, 2019*) (a) Except as limited by  
273 court order or law of this state other than sections 1 to 28, inclusive, of  
274 this act, a receiver may:

275 (1) Collect, control, manage, conserve and protect receivership  
276 property;

277 (2) Operate a business constituting receivership property, including  
278 preservation, use, sale, lease, license, exchange, collection or  
279 disposition of the property in the ordinary course of business;

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

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

285 (5) Seek and obtain instruction from the court concerning  
286 receivership property, exercise of the receiver's powers and  
287 performance of the receiver's duties;

288 (6) On subpoena, compel a person to submit to examination under  
289 oath, or to produce and permit inspection and copying of designated

290 records or tangible things, with respect to receivership property or any  
291 other matter that may affect administration of the receivership;

292 (7) Engage a professional, as provided in section 15 of this act;

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

295 (9) Exercise any power conferred by court order, sections 1 to 28,  
296 inclusive, of this act or the law of this state other than sections 1 to 28,  
297 inclusive, of this act.

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

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

301 (2) Make improvements to receivership property;

302 (3) Use or transfer receivership property other than in the ordinary  
303 course of business, as provided in section 16 of this act;

304 (4) Adopt or reject an executory contract of the owner, as provided  
305 in section 17 of this act;

306 (5) Pay compensation to the receiver, as provided in section 21 of  
307 this act and to each professional engaged by the receiver, as provided  
308 in section 15 of this act;

309 (6) Recommend allowance or disallowance of a claim of a creditor,  
310 as provided in section 20 of this act; and

311 (7) Make a distribution of receivership property, as provided in  
312 section 20 of this act.

313 (c) A receiver shall:

314 (1) Prepare and retain appropriate business records, including a  
315 record of each receipt, disbursement and disposition of receivership

316 property;

317 (2) Account for receivership property, including the proceeds of a  
318 sale, lease, license, exchange, collection or other disposition of the  
319 property;

320 (3) File on the land records of the town where the real property is  
321 located a copy of the order appointing the receiver and, if a legal  
322 description of the real property is not included in the order, the legal  
323 description;

324 (4) Disclose to the court any fact arising during the receivership  
325 which would disqualify the receiver under section 7 of this act; and

326 (5) Perform any duty imposed by court order, sections 1 to 28,  
327 inclusive, of this act or the law of this state other than sections 1 to 28,  
328 inclusive, of this act.

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

331 Sec. 13. (NEW) (*Effective October 1, 2019*) (a) An owner shall:

332 (1) Assist and cooperate with the receiver in the administration of  
333 the receivership and the discharge of the receiver's duties;

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

336 (3) Identify all records and other information relating to the  
337 receivership property, including a password, authorization or other  
338 information needed to obtain or maintain access to or control of the  
339 receivership property, and make available to the receiver the records  
340 and information in the owner's possession, custody or control;

341 (4) On subpoena, submit to examination under oath by the receiver  
342 concerning the acts, conduct, property, liabilities and financial  
343 condition of the owner or any matter relating to the receivership

344 property or the receivership; and

345 (5) Perform any duty imposed by court order, sections 1 to 28,  
346 inclusive, of this act or the law of this state other than sections 1 to 28,  
347 inclusive, of this act.

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

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

354 (1) Award the receiver actual damages caused by the person's  
355 failure, reasonable attorneys' fees and costs; and

356 (2) Sanction the failure as civil contempt.

357 Sec. 14. (NEW) (*Effective October 1, 2019*) (a) Except as otherwise  
358 provided in subsection (d) of this section or ordered by the court, an  
359 order appointing a receiver operates as a stay, applicable to all  
360 persons, of an act, action or proceeding:

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

363 (2) To enforce a lien against receivership property to the extent the  
364 lien secures a claim against the owner which arose before entry of the  
365 order.

366 (b) Except as otherwise provided in subsection (d) of this section,  
367 the court may enjoin an act, action or proceeding against or relating to  
368 receivership property if the injunction is necessary to protect the  
369 property or facilitate administration of the receivership.

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

372 injunction for cause.

373 (d) An order under subsection (a) or (b) of this section does not  
374 operate as a stay or injunction of:

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

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

379 (3) Commencement or continuation of a criminal proceeding;

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

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

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

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

390 (1) Award actual damages caused by the violation, reasonable  
391 attorneys' fees and costs; and

392 (2) Sanction the violation as civil contempt.

393 Sec. 15. (NEW) (*Effective October 1, 2019*) (a) With court approval, a  
394 receiver may engage an attorney, accountant, appraiser, auctioneer,  
395 broker or other professional to assist the receiver in performing a duty  
396 or exercising a power of the receiver. The receiver shall disclose to the  
397 court:

- 398 (1) The identity and qualifications of the professional;  
399 (2) The scope and nature of the proposed engagement;  
400 (3) Any potential conflict of interest; and  
401 (4) The proposed compensation.

402 (b) A person is not disqualified from engagement under this section  
403 solely because of the person's engagement by, representation of, or  
404 other relationship with the receiver, a creditor or a party. Sections 1 to  
405 28, inclusive, of this act do not prevent the receiver from serving in the  
406 receivership as an attorney, accountant, auctioneer or broker when  
407 authorized by law.

408 (c) A receiver or professional engaged under subsection (a) of this  
409 section shall file with the court an itemized statement of the time spent,  
410 work performed and billing rate of each person that performed the  
411 work and an itemized list of expenses. The receiver shall pay the  
412 amount approved by the court.

413 Sec. 16. (NEW) (*Effective October 1, 2019*) (a) In this section, "good  
414 faith" means honesty in fact and the observance of reasonable  
415 commercial standards of fair dealing.

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

418 (c) With court approval, a receiver may transfer receivership  
419 property other than in the ordinary course of business by sale, lease,  
420 license, exchange or other disposition. Unless the agreement of sale  
421 provides otherwise, a sale under this section is free and clear of a lien  
422 of the person that obtained appointment of the receiver, any  
423 subordinate lien and any right of redemption, but is subject to a senior  
424 lien.

425 (d) A lien on receivership property which is extinguished by a



426 transfer under subsection (c) of this section attaches to the proceeds of  
427 the transfer with the same validity, perfection and priority the lien had  
428 on the property immediately before the transfer, even if the proceeds  
429 are not sufficient to satisfy all obligations secured by the lien.

430 (e) A transfer under subsection (c) of this section may occur by  
431 means other than a public auction sale. A creditor holding a valid lien  
432 on the property to be transferred may purchase the property and offset  
433 against the purchase price part or all of the allowed amount secured by  
434 the lien, if the creditor tenders funds sufficient to satisfy in full the  
435 reasonable expenses of transfer and the obligation secured by any  
436 senior lien extinguished by the transfer.

437 (f) A reversal or modification of an order approving a transfer under  
438 subsection (c) of this section does not affect the validity of the transfer  
439 to a person that acquired the property in good faith or revive against  
440 the person any lien extinguished by the transfer, whether the person  
441 knew before the transfer of the request for reversal or modification,  
442 unless the court stayed the order before the transfer.

443 Sec. 17. (NEW) (*Effective October 1, 2019*) (a) In this section,  
444 "timeshare interest" means an interest having a duration of more than  
445 three years which grants its holder the right to use and occupy an  
446 accommodation, facility or recreational site, whether improved or not,  
447 for a specific period less than a full year during any given year.

448 (b) Except as otherwise provided in subsection (h) of this section,  
449 with court approval, a receiver may adopt or reject an executory  
450 contract of the owner relating to receivership property. The court may  
451 condition the receiver's adoption and continued performance of the  
452 contract on terms appropriate under the circumstances. If the receiver  
453 does not request court approval to adopt or reject the contract within a  
454 reasonable time after the receiver's appointment, the receiver is  
455 deemed to have rejected the contract.

456 (c) A receiver's performance of an executory contract before court

457 approval under subsection (b) of this section of its adoption or  
458 rejection is not an adoption of the contract and does not preclude the  
459 receiver from seeking approval to reject the contract.

460 (d) A provision in an executory contract which requires or permits a  
461 forfeiture, modification or termination of the contract because of the  
462 appointment of a receiver or the financial condition of the owner does  
463 not affect a receiver's power under subsection (b) of this section to  
464 adopt the contract.

465 (e) A receiver's right to possess or use receivership property  
466 pursuant to an executory contract terminates on rejection of the  
467 contract under subsection (b) of this section. Rejection is a breach of the  
468 contract effective immediately before appointment of the receiver. A  
469 claim for damages for rejection of the contract must be submitted by  
470 the later of:

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

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

473 (f) If at the time a receiver is appointed, the owner has the right to  
474 assign an executory contract relating to receivership property under  
475 the law of this state other than sections 1 to 28, inclusive, of this act, the  
476 receiver may assign the contract with court approval.

477 (g) If a receiver rejects under subsection (b) of this section an  
478 executory contract for the sale of receivership property that is real  
479 property in possession of the purchaser or a real-property timeshare  
480 interest, the purchaser may:

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

484 (2) Retain the purchaser's right to possession under the contract, and  
485 in that case the purchaser shall continue to perform all obligations

486 arising under the contract and may offset any damages caused by  
487 nonperformance of an obligation of the owner after the date of the  
488 rejection, but the purchaser has no right or claim against other  
489 receivership property or the receiver on account of the damages.

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

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

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

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

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

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

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

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

508 Sec. 18. (NEW) (*Effective October 1, 2019*) (a) A receiver is entitled to  
509 all defenses and immunities provided by the law of this state other  
510 than sections 1 to 28, inclusive, of this act for an act or omission within  
511 the scope of the receiver's appointment.

512 (b) A receiver may be sued personally for an act or omission in  
513 administering receivership property only with approval of the court

514 that appointed the receiver.

515 Sec. 19. (NEW) (*Effective October 1, 2019*) A receiver may file or, if  
516 ordered by the court, shall file an interim report that includes:

517 (1) The activities of the receiver since appointment or a previous  
518 report;

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

521 (3) Receipts and dispositions of receivership property;

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

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

525 Sec. 20. (NEW) (*Effective October 1, 2019*) (a) Except as otherwise  
526 provided in subsection (f) of this section, a receiver shall give notice of  
527 appointment of the receiver to creditors of the owner by:

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

531 (2) Publication as directed by the court.

532 (b) Except as otherwise provided in subsection (f) of this section, the  
533 notice required by subsection (a) of this section must specify the date  
534 by which each creditor holding a claim against the owner which arose  
535 before appointment of the receiver must submit the claim to the  
536 receiver. The date specified must be at least ninety days after the later  
537 of notice under subdivision (1) of subsection (a) of this section or last  
538 publication under subdivision (2) of subsection (a) of this section. The  
539 court may extend the period for submitting the claim. Unless the court  
540 orders otherwise, a claim that is not submitted timely is not entitled to  
541 a distribution from the receivership.

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

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

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

545 (3) Identify any property securing the claim;

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

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

548 (d) An assignment by a creditor of a claim against the owner is  
549 effective against the receiver only if the assignee gives timely notice of  
550 the assignment to the receiver in a signed record.

551 (e) At any time before entry of an order approving a receiver's final  
552 report, the receiver may file with the court an objection to a claim of a  
553 creditor, stating the basis for the objection. The court shall allow or  
554 disallow the claim according to the law of this state other than sections  
555 1 to 28, inclusive, of this act.

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

559 (1) The receiver need not give notice under subsection (a) of this  
560 section of the appointment to all creditors of the owner, but only such  
561 creditors as the court directs; and

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

563 (g) Subject to the provisions of section 21 of this act:

564 (1) A distribution of receivership property to a creditor holding a  
565 perfected lien on the property must be made in accordance with the  
566 creditor's priority under the law of this state other than sections 1 to 28,  
567 inclusive, of this act; and

568 (2) A distribution of receivership property to a creditor with an  
569 allowed unsecured claim must be made as the court directs according  
570 to the law of this state other than sections 1 to 28, inclusive, of this act.

571 Sec. 21. (NEW) (*Effective October 1, 2019*) (a) The court may award a  
572 receiver from receivership property the reasonable and necessary fees  
573 and expenses of performing the duties of the receiver and exercising  
574 the powers of the receiver.

575 (b) The court may order one or more of the following to pay the  
576 reasonable and necessary fees and expenses of the receivership,  
577 including reasonable attorneys' fees and costs:

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

581 (2) A person whose conduct justified or would have justified the  
582 appointment of the receiver under subdivision (1) of subsection (a) of  
583 section 6 of this act.

584 Sec. 22. (NEW) (*Effective October 1, 2019*) (a) The court may remove a  
585 receiver for cause.

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

588 (c) If the court finds that a receiver that resigns or is removed, or the  
589 representative of a receiver that is deceased, has accounted fully for  
590 and turned over to the successor receiver all receivership property and  
591 has filed a report of all receipts and disbursements during the service  
592 of the replaced receiver, the replaced receiver is discharged.

593 (d) The court may discharge a receiver and terminate the court's  
594 administration of the receivership property if the court finds that  
595 appointment of the receiver was improvident or that the circumstances  
596 no longer warrant continuation of the receivership. If the court finds

597 that the appointment was sought wrongfully or in bad faith, the court  
598 may assess against the person that sought the appointment:

599 (1) The fees and expenses of the receivership, including reasonable  
600 attorneys' fees and costs; and

601 (2) Actual damages caused by the appointment, including  
602 reasonable attorneys' fees and costs.

603 Sec. 23. (NEW) (*Effective October 1, 2019*) (a) On completion of a  
604 receiver's duties, the receiver shall file a final report including:

605 (1) A description of the activities of the receiver in the conduct of the  
606 receivership;

607 (2) A list of receivership property at the commencement of the  
608 receivership and any receivership property received during the  
609 receivership;

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

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

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

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

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

618 (b) If the court approves a final report filed under subsection (a) of  
619 this section and the receiver distributes all receivership property, the  
620 receiver is discharged.

621 Sec. 24. (NEW) (*Effective October 1, 2019*) (a) The court may appoint a  
622 receiver appointed in another state, or that person's nominee, as an

623 ancillary receiver with respect to property located in this state or  
624 subject to the jurisdiction of the court for which a receiver could be  
625 appointed under sections 1 to 28, inclusive, of this act, if:

626 (1) The person or nominee would be eligible to serve as receiver  
627 under section 7 of this act; and

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

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

633 (c) Unless the court orders otherwise, an ancillary receiver  
634 appointed under subsection (a) of this section has the rights, powers  
635 and duties of a receiver appointed under sections 1 to 28, inclusive, of  
636 this act.

637 Sec. 25. (NEW) (*Effective October 1, 2019*) A request by a mortgagee  
638 for appointment of a receiver, the appointment of a receiver or  
639 application by a mortgagee of receivership property or proceeds to the  
640 secured obligation does not:

641 (1) Make the mortgagee a mortgagee in possession of the real  
642 property;

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

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

646 (4) Make the secured obligation unenforceable; or

647 (5) Limit any right available to the mortgagee with respect to the  
648 secured obligation.

649 Sec. 26. (NEW) (*Effective October 1, 2019*) In applying and construing



650 sections 1 to 28, inclusive, of this act, consideration must be given to  
 651 the need to promote uniformity of the law with respect to its subject  
 652 matter among states that enact it.

653 Sec. 27. (NEW) (*Effective October 1, 2019*) Sections 1 to 28, inclusive,  
 654 of this act modify, limit and supersede the Electronic Signatures in  
 655 Global and National Commerce Act, 15 USC 7001 et seq., but do not  
 656 modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c) or  
 657 authorize electronic delivery of any of the notices described in Section  
 658 103(b) of said act, 15 USC 7003(b).

659 Sec. 28. (NEW) (*Effective October 1, 2019*) Sections 1 to 28, inclusive,  
 660 of this act do not apply to a receivership for which the receiver was  
 661 appointed before October 1, 2019.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	New section
Sec. 2	<i>October 1, 2019</i>	New section
Sec. 3	<i>October 1, 2019</i>	New section
Sec. 4	<i>October 1, 2019</i>	New section
Sec. 5	<i>October 1, 2019</i>	New section
Sec. 6	<i>October 1, 2019</i>	New section
Sec. 7	<i>October 1, 2019</i>	New section
Sec. 8	<i>October 1, 2019</i>	New section
Sec. 9	<i>October 1, 2019</i>	New section
Sec. 10	<i>October 1, 2019</i>	New section
Sec. 11	<i>October 1, 2019</i>	New section
Sec. 12	<i>October 1, 2019</i>	New section
Sec. 13	<i>October 1, 2019</i>	New section
Sec. 14	<i>October 1, 2019</i>	New section
Sec. 15	<i>October 1, 2019</i>	New section
Sec. 16	<i>October 1, 2019</i>	New section
Sec. 17	<i>October 1, 2019</i>	New section
Sec. 18	<i>October 1, 2019</i>	New section
Sec. 19	<i>October 1, 2019</i>	New section
Sec. 20	<i>October 1, 2019</i>	New section
Sec. 21	<i>October 1, 2019</i>	New section

Sec. 22	<i>October 1, 2019</i>	New section
Sec. 23	<i>October 1, 2019</i>	New section
Sec. 24	<i>October 1, 2019</i>	New section
Sec. 25	<i>October 1, 2019</i>	New section
Sec. 26	<i>October 1, 2019</i>	New section
Sec. 27	<i>October 1, 2019</i>	New section
Sec. 28	<i>October 1, 2019</i>	New section

***Statement of Legislative Commissioners:***

In Section 28, the reference to "October 1, 2018" was changed to "October 1, 2019" for accuracy.

***JUD***      *Joint Favorable Subst. -LCO*