

AN ACT concerning receivership.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Illinois Receivership Act.

Section 2. Definitions. In this Act:

(1) "Adequate protection" means protection against the decrease in the value of a person's interest in property resulting from the turnover, stay, use, sale, or lease of such property during the receivership.

(2) "Affiliate" means:

(A) with respect to an individual:

(i) a companion of the individual;

(ii) a lineal ancestor or descendant, whether by blood or adoption, of:

(I) the individual; or

(II) a companion of the individual;

(iii) a companion of an ancestor or descendant described in clause (ii);

(iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of

any of them; or

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

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

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

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

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

(3) "Claim" means:

(A) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(4) "Collateral" means the property subject to a lien.

(5) "Companion" means:

(A) the spouse of an individual;

(B) the domestic partner of an individual;

(C) another individual in a civil union with an individual; or

(D) an individual sharing the same residence with another individual.

(6) "Court" means a circuit court of this State. In the context of a foreign receiver, the court means the court of the state that appointed the foreign receiver.

(7) "Debtor" means a person having an interest, other than a lien, in collateral, whether or not the person is liable for the secured obligation. The term includes a mortgagor.

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

(9) "Foreign receiver" means a receiver appointed by a court in another state.

(10) "Governmental unit" means an office, unit, department, division, bureau, board, commission, or other agency of this State or a subdivision of this State.

(11) "Lien" means a charge against or interest in property to secure payment of a debt or performance of an obligation.

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

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

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

(15) "Owner" means the person for whose property or business a receiver is appointed.

(16) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(17) "Proceeds" means the following property:

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

(B) whatever is collected on, or distributed on account of, receivership property;

(C) rights arising out of receivership property;

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

(E) to the extent of the value of receivership property and to the extent payable to the owner or secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

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

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

(20) "Receivership" means a proceeding in which a receiver is appointed.

(21) "Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

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

(23) "Rents" means all items that constitute leases, rents, and profits arising from real property under applicable State law.

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

(25) "Secured party" means a person entitled to enforce a

secured obligation. The term includes a mortgagee.

(26) "Security agreement" means an agreement that creates or provides for a lien. The term includes a mortgage.

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

(A) to execute or adopt a tangible symbol; or

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

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

Section 3. Notice and opportunity for hearing.

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

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

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

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

(3) after notice and without a hearing if no interested party timely requests a hearing.

(c) In connection with any sale of receivership property

under Section 16 of this Act, notice shall be provided to:

(1) the owner and all other persons having an interest in the property that would be affected by the sale;

(2) with respect to any sale of real property, nonrecord claimants, unknown necessary parties, and unknown owners by publication in accordance with Sections 2-206 and 2-207 of the Code of Civil Procedure; and

(3) such other persons as the court directs.

Section 4. Scope; exclusions.

(a) Except as otherwise provided in subsection (b) or (c), this Act applies to a receivership for an interest in any one or more of the following:

(1) in real property and any personal property related to or used in operating the real property;

(2) in personal property and fixtures; or

(3) a person that is not an individual.

(b) This Act does not apply to residential real estate as defined under Section 15-1219 of the Illinois Mortgage Foreclosure Law.

(c) This Act does not apply to a receivership if the receiver is appointed under: (1) Section 58 of the Illinois Banking Act; (2) Section 10011 of the Savings Bank Act; (3) Section 15.1 of the Currency Exchange Act; (4) Section 6-9 of the Corporate Fiduciary Act; (5) Section 92 of the Transmitters of Money Act; (6) Section 15-1704 of the Illinois

Mortgage Foreclosure Law; (7) Section 5 of the Nursing Home Care Act; or (8) any law of this State other than this Act in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit, except to the extent provided by the other law. Notwithstanding the foregoing, a governmental unit or an individual acting in an official capacity on behalf of the unit may elect for this Act to apply to a receivership to the extent not inconsistent with the other law.

(d) This Act does not limit the authority of a court to appoint a receiver under law of this State other than this Act.

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

Section 5. Power of court. The court that appoints a receiver under this Act has exclusive jurisdiction and authority:

- (a) to direct and control the receiver;
- (b) over all receivership property wherever located;
- (c) to determine all controversies related to the receivership or the collection, preservation, improvement, disposition, and distribution of receivership property; and
- (d) over all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of

the receiver's duties.

Section 6. Appointment of receiver.

(a) The court may appoint a receiver:

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

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

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

(2) after judgment:

(A) to enforce or otherwise carry the judgment into effect; or

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

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

(A) the object of the action is the dissolution of the person;

(B) the person has been dissolved;

(C) the persons in control of the person are deadlocked in the management of the person's affairs;

(D) the acts of the persons in control of the person are illegal, oppressive, or fraudulent; or

(E) the person is insolvent or generally is not paying the person's debts as those debts become due;

(4) in an action in which a receiver may be appointed by law or on equitable grounds; or

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

(b) In connection with the foreclosure or other enforcement of a lien, the court may appoint a receiver for the collateral if:

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

(2) the debtor agreed in a signed record to appointment of a receiver on default;

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

(4) the collateral and any other collateral security held by the secured party are not sufficient to satisfy the secured obligation;

(5) the owner fails to turn over to the secured party proceeds or rents the secured party was entitled to collect; or

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

(c) The court may appoint a receiver to prevent irreparable harm without prior notice under Section 3(b)(1) or without a prior hearing under Section 3(b)(2) and may condition such appointment on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

Section 7. Disqualification from appointment as receiver; disclosure of interest.

(a) Any person, whether or not a resident of this State, may serve as a receiver unless the person is disqualified under this Act.

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

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

(1) is an affiliate of a party or the judge presiding over the receivership;

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

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

(4) has a debtor-creditor relationship with a party;

(5) holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company;

(6) is a sheriff of any county; or

(7) is otherwise prohibited from acting as an agent of the court under the laws of this State.

(d) A person is not disqualified from appointment as receiver solely because the person:

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

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

(3) maintains with a party a deposit account as defined in Section 9-102(a)(29) of the Uniform Commercial Code.

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

Section 8. Receiver's bond; alternative security.

(a) Except as otherwise provided in subsection (b) and

(c), a receiver shall post with the court a bond that:

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

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

(3) is in an amount the court specifies; and

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

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

(c) For good cause shown, the court may waive the requirement that the receiver post with the court a bond or alternative security required by this Section.

(d) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this Section.

Section 9. Status of receiver as lien creditor. On appointment of a receiver, the receiver has the status of a lien creditor:

(1) under Sections 9-101 to 9-809 of the Uniform Commercial Code as to receivership property that is personal property or fixtures;

(2) under Sections 1 to 39 of the Conveyances Act as to receivership property that is real property as to persons with actual or constructive notice of the appointment and to all other persons from the time of recording of the order appointing the receiver pursuant to Section 12(c) (3) of this Act; and

(3) as if the receiver were a creditor that obtained a judicial lien on all the receivership property, subject to satisfying the recording requirements as to real property described in Section 12(c) (3) of this Act.

Section 10. Security agreement covering after-acquired property. Except as otherwise provided by law of this State other than this Act, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

Section 11. Collection and turnover of receivership property.

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

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

recoupment; and

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

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

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

(d) The receiver may seek to compel a person to comply with the obligations of this Section by motion. The court may order a person that has possession, custody, or control of receivership property to turn over such property to the receiver.

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

Section 12. Powers and duties of receiver.

(a) Except as limited by court order or law of this State

other than this Act, a receiver may:

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

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

(3) in the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if, in the receiver's business judgment, payment is necessary to preserve the value of receivership property using funds that are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment;

(4) incur debt under a secured obligation in effect as of the receiver's appointment subject to the same terms, conditions, and lien priorities that existed as of the receiver's appointment;

(5) assert a right, claim, cause of action, or defense of the owner which relates to receivership property and maintain in the receiver's name or owner's name any action to enforce any such right, claim, cause of action, or

defense and intervene in actions in which owner is a party for the purpose of exercising any rights pursuant to this subsection (a) (5) or requesting transfer of venue of the action to the court;

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

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

(8) engage a professional as provided in Section 15;

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

(10) exercise any power conferred by court order, this Act, or law of this State other than this Act.

(b) With court approval, a receiver may:

(1) Except as otherwise provided in subsection (a) (4), incur debt for the use or benefit of receivership property other than in the ordinary course of business provided that any lien securing such indebtedness is junior to any existing liens on the receivership property, unless otherwise authorized by the law of this State other than

this Act;

(2) make improvements to receivership property;

(3) use, sell, lease, or transfer receivership property other than in the ordinary course of business as provided in Section 16 and execute in the owner's name any documents, conveyances, and consents as may be required for such use, sale, lease, or transfer;

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

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

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

(7) make a distribution of receivership property as provided in Section 20;

(8) settle or release any rights, claims, causes of action, or defenses or the owner asserted in subsection (a) (5); and

(9) abandon to the owner any receivership property that is burdensome or is not of material value to the receivership.

(c) A receiver shall:

(1) prepare and retain appropriate business records from the receiver's appointment until the receiver's discharge, including a record of each receipt,

disbursement, and disposition of receivership property;

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

(3) promptly file or record, as applicable, with the county recorder's office in the county where the real property is located, a notice of the receivership setting forth the name of the receiver, the owner of the real property, the title of the action, a legal description of the real property, if any, and a copy of the order appointing the receiver;

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

(5) perform any duty imposed by court order, this Act, or law of this State other than this Act.

(d) The recording of the notice of the receivership set forth in subsection (c) shall constitute constructive notice of the receivership to every person subsequently acquiring an interest in or a lien on the real property affected thereby.

(e) A subordination agreement is enforceable to the same extent that it is enforceable under the law of this State other than this Act.

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

Section 13. Duties of owner.

(a) An owner shall:

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

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

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

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

(5) perform any duty imposed by court order, this Act, or law of this State other than this Act.

(b) Without limiting the owner's obligations under subsection (a), and unless the court orders otherwise, the owner shall file with the court and provide the receiver within 14 days of the receiver's appointment:

(1) A list of all receivership property and exempt property of the owner, identifying:

(A) The location of the property, including the legal description of any real property;

(B) A description of all liens to which the property is subject; and

(C) The estimated value of the property.

(2) A list of all creditors, taxing authorities, and regulatory authorities having claims against the owner:

(A) their mailing addresses;

(B) the amount and nature of their respective claims as of the date of the receiver's appointment;

(C) whether the claims are secured by liens; and

(D) whether the claims are disputed.

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

(d) If a person knowingly fails to perform a duty imposed by this Section, the court may:

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

(2) sanction the failure as civil contempt; and

(3) impose other equitable remedies, including an injunction or constructive trust to address a person's failure to comply with a duty under this Section.

Section 14. Stay; injunction.

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

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

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

(b) In addition to any stay provided in this Section, the court may enjoin an act, action, or proceeding against or relating to receivership property, the owner, or the receiver if the injunction is necessary to protect the receivership property or facilitate administration of the receivership.

(c) A person whose act, action, or proceeding is stayed or enjoined under this Section may apply to the court for relief from the stay or injunction for cause, including lack of adequate protection.

(d) An order appointing a receiver does not operate as a stay or injunction of:

(1) an act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property, provided that if perfection of an interest would require seizure of receivership property or

commencement of an action, the perfection shall instead be accomplished by filing with the court, and by serving upon the receiver, notice of the interest within the time fixed by law for seizure or commencement;

(2) commencement or continuation of a criminal proceeding;

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

(4) establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability; or

(5) the exercise of rights of a party to a swap agreement, securities contract, repurchase agreement, commodity contract, forward contract, or master netting agreement, as those terms are defined in the federal Bankruptcy Code, to the extent that a court would not have the power to stay the exercise if the owner were a debtor under the Bankruptcy Code.

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

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

(1) award actual damages caused by the violation,

reasonable attorney's fees, and costs; and

(2) sanction the violation as civil contempt.

(g) If the stay under this Section enjoins the performance of an act or the commencement of an action or proceeding, the time established by law other than this Act, court order or contract to perform such act or commence such action or proceeding shall be tolled during the stay.

Section 15. Engagement and compensation of professionals.

(a) With court approval, a receiver may engage one or more attorneys, accountants, appraisers, auctioneers, brokers, or other professionals to assist the receiver in performing a duty or exercising a power of the receiver. The court may authorize the receiver's engagement of professionals on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, on a contingent fee basis or a combination of the foregoing. In connection with the proposed engagement of a professional, the receiver shall disclose to the court:

(1) the identity and qualifications of the professional;

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

(3) any potential conflict of interest; and

(4) the proposed compensation.

(b) A person is not disqualified from engagement under this Section solely because of the person's engagement by,

representation of, or other relationship with the receiver, a creditor, or a party. This Act does not prevent the receiver from serving in the receivership as an attorney, accountant, appraiser, auctioneer, broker, or other professional when authorized by law.

(c) Subject to any procedures that the court may impose, the receiver or professionals engaged by the receiver under subsection (a) may be paid reasonable compensation for their services on an interim basis in the same manner as other expenses of administration and without the necessity of court approval.

(d) Except to the extent the fees and expenses of the receiver or professionals engaged by the receiver under subsection (a) have been approved by the court, any interim payments of fees and expenses shall be approved in connection with the receiver's final report as provided in Section 23. The receiver or professionals seeking court approval of their fees and expenses shall file with the court such information as may be necessary for the court to determine the reasonableness of the requested fees and expenses. If engaged on an hourly basis, a receiver or professional shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

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

(a) In this Section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

(c) With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this Section is free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption. However, unless the holder of a senior lien consents, such a sale:

(1) is subject to the senior lien and to the rights and remedies of the holder of the senior lien under law other than this Act; and

(2) does not affect the obligation secured by the senior lien.

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

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

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

Section 17. Executory contracts.

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

(b) Except as otherwise provided in subsection (h), with court approval, a receiver may assume or reject an executory contract of the owner relating to receivership property. An

executory contract may only be assumed or rejected by court order. The court may condition the receiver's assumption and continued performance of the executory contract on terms appropriate under the circumstances. If the receiver does not obtain court approval to assume or reject the executory contract by the termination of receivership, the receiver is deemed to have rejected the executory contract. At the request of the non-owner party to the executory contract, a court may set a reasonable time after the receiver's appointment to assume or reject an executory contract.

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

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

(e) A receiver's right to possess or use receivership property pursuant to an executory contract terminates upon rejection of the contract under subsection (b). Rejection of an executory contract constitutes a breach of the executory contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract

shall be presented or filed in the same manner as other claims in the receivership no later than:

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

(2) 30 days after the court approves the rejection.

(f) If, at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this State other than this Act, the receiver may assign the contract with court approval and subject to the terms of the contract.

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

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

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

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

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

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

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

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

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

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

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

Section 18. Defenses and immunities of receiver.

(a) A receiver is entitled to all defenses and immunities provided by law of this State for an act or omission within the

scope of the receiver's appointment.

(b) Approval of the court that appointed the receiver must be obtained before the commencement of an action or proceeding against the receiver or a professional engaged by the receiver regarding an act or omission in administering receivership property.

(c) A party or party in interest may conduct discovery of the receiver concerning any matter relating to the receiver's administration of the receivership property after obtaining an order authorizing the discovery.

Section 19. Interim report of receiver. A receiver may file or, if ordered by the court, shall file an interim report that includes:

- (1) the dates covered by the interim report;
- (2) the activities of the receiver since appointment or a previous report;
- (3) receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;
- (4) receipts and dispositions of receivership property;
- (5) fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and
- (6) any other information required by the court.

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

(a) Except as otherwise provided in subsection (h), a receiver shall give notice of appointment of the receiver to all creditors of the owner by:

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

(2) such other means as directed by the court.

(b) Except as otherwise provided in subsection (h), the notice required by subsection (a) must specify the date by which each creditor holding a claim against the owner which arose before appointment of the receiver must file the claim with the court. The date specified must be at least 60 days after the date of the notice under subsection (a). Unless the court orders otherwise, a claim that is not timely filed with the court is not entitled to a distribution from the receivership.

(c) A claim filed by a creditor under this subsection shall be titled "Proof of Claim" and must:

(1) state the name and address of the creditor;

(2) state the amount and basis of the claim;

(3) identify any property securing the claim;

(4) be signed by the creditor or an authorized agent under penalty of perjury; and

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

(d) An assignment by a creditor of a claim against the owner or receivership is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record prior to the entry of an order approving a receiver's final report.

(e) A claim filed with the court in accordance with subsections (b) and (c) constitutes prima facie evidence of the validity and amount of the claim. At any time before entry of an order approving a receiver's final report, the receiver or other person with an interest in the receivership may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim according to the law of this State other than this Act.

(f) Upon motion of the receiver or other person with an interest in the receivership, the following claims may be estimated for purpose of allowance under this Section:

(1) any contingent or unliquidated claims, the fixing or liquidation of which would unduly delay the administration of the receivership; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(g) Claims subject to estimation under subsection (f) shall be allowed in the estimated amount as determined by the

court.

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

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

(2) unsecured creditors need not submit claims under this Section.

(i) Subject to Section 21:

(1) a distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under law of this State other than this Act;

(2) a distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs on a pro rata basis according to law of this State other than this Act; and

(3) if all of the creditors holding claims have been paid in full, any residue shall be paid to the owner.

Section 21. Fees and expenses.

(a) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the

powers of the receiver.

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

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

(2) a person whose conduct justified or would have justified the appointment of the receiver under Section 6(a)(1) or 6(a)(3)(D).

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

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

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

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

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

the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

- (1) the fees and expenses of the receivership, including reasonable attorney's fees and costs; and
- (2) actual damages caused by the appointment, including reasonable attorney's fees and costs.

Section 23. Final report of receiver; discharge.

(a) Unless excused by the court, on completion of a receiver's duties, the receiver shall file a motion seeking approval of a final report and termination of the court's administration of the receivership property.

(b) The final report shall include:

- (1) a description of the activities of the receiver in the conduct of the receivership;
- (2) a list of receivership property at the commencement of the receivership and any receivership property received during the receivership;
- (3) a list of disbursements, including payments to professionals engaged by the receiver;
- (4) a list of dispositions of receivership property;
- (5) a list of distributions made or proposed to be made from the receivership for creditor claims;
- (6) if not filed separately, a request for approval of the payment of fees and expenses of the receiver and the

receiver's professionals; and

(7) any other information required by the court.

(c) If the court approves a final report filed under subsection (a) and the receiver distributes all receivership property, the receiver is discharged and the court's administration of the receivership property is terminated. The order approving a final report and termination of the receivership shall include such additional terms as the court deems appropriate.

Section 24. Receivership in another state; ancillary proceeding.

(a) The court may appoint a foreign receiver as an ancillary receiver with respect to property located in this State or subject to the jurisdiction of the court for which a receiver could be appointed under this Act, if:

(1) the person would be eligible to serve as receiver under Section 7 of this Act; and

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

(3) the appointment is authorized by the court that appointed the foreign receiver.

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

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

Section 25. Effect of enforcement by secured party. A request by a secured party for appointment of a receiver, the appointment of a receiver, or application by a secured party of receivership property or proceeds to the secured obligation does not:

- (1) make the secured party a mortgagee in possession of real property;
- (2) impose any duty on the secured party under Section 9-207 of the Uniform Commercial Code;
- (3) make the secured party an agent of the owner;
- (4) constitute an election of remedies that precludes a later action to enforce the secured obligation;
- (5) make the secured obligation unenforceable; or
- (6) limit any right available to the secured party with respect to the secured obligation.

Section 26. Uniformity of application and construction. In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 27. Relation to Electronic Signatures in Global and National Commerce Act. This Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

Section 28. Transition. This Act does not apply to a receivership for which the receiver was appointed before the effective date of this Act.

Section 29. Inapplicability. The provisions of Section 2-415 of the Code of Civil Procedure do not apply to a receivership under this Act.