



General Assembly

February Session, 2020

Raised Bill No. 5258

LCO No. 1585



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

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, 2020*) Sections 1 to 28, inclusive,
2 of this act, may be cited as the Uniform Commercial Real Estate
3 Receivership Act.

4 Sec. 2. (NEW) (*Effective October 1, 2020*) 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, of
10 (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 related
15 by the whole or the half blood or adoption, or a companion of any of
16 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 subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (C) Rights arising out of receivership property;

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

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

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

65 (14) "Receiver" means a person appointed by the court as the court's

66 agent, and subject to the court's direction, to take possession of, manage
67 and, if authorized by sections 1 to 28, inclusive, of this act or court order,
68 transfer, sell, lease, license, exchange, collect or otherwise dispose of
69 receivership property.

70 (15) "Receivership" means a proceeding in which a receiver is
71 appointed.

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

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

79 (18) "Rents" means:

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

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

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

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

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

91 (F) Other sums payable under an agreement relating to the real
92 property of another person which constitute rents under the law of this

93 state other than sections 1 to 28, inclusive, of this act.

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

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

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

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

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

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

106 Sec. 3. (NEW) (*Effective October 1, 2020*) (a) Except as provided in
107 subsection (b) of this section, the court may issue an order under
108 sections 1 to 28, inclusive, of this act only after notice and an opportunity
109 for a hearing that the court deems appropriate in the circumstances.

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

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

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

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

118 Sec. 4. (NEW) (*Effective October 1, 2020*) (a) Except as provided in

119 subsection (b) or (c) of this section, sections 1 to 28, inclusive, of this act
120 apply to a receivership for an interest in real property and any personal
121 property related to or used in operating the real property.

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

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

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

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

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

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

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

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

147 Sec. 5. (NEW) (*Effective October 1, 2020*) The court that appoints a
148 receiver under sections 1 to 28, inclusive, of this act has exclusive
149 jurisdiction to direct the receiver and determine any controversy related
150 to the receivership or receivership property.

151 Sec. 6. (NEW) (*Effective October 1, 2020*) (a) The court may appoint a
152 receiver:

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

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

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

159 (2) After judgment:

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

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

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

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

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

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

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

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

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

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

181 (c) The court may condition appointment of a receiver without prior
182 notice under subdivision (1) of subsection (b) of section 3 of this act or
183 without a prior hearing under subdivision (2) of subsection (b) of section
184 3 of this act on the giving of security by the person seeking the
185 appointment for the payment of damages, reasonable attorneys' fees
186 and costs incurred or suffered by any person if the court later concludes
187 that the appointment was not justified. If the court later concludes that
188 the appointment was justified, the court shall release the security.

189 Sec. 7. (NEW) (*Effective October 1, 2020*) (a) The court may not appoint
190 a person as receiver unless the person submits to the court a statement
191 under penalty of perjury that the person is not disqualified.

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

194 (1) Is an affiliate of a party;

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

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

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

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

200 interest in a publicly traded company.

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

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

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

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

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

215 Sec. 8. (NEW) (*Effective October 1, 2020*) (a) Except as provided in
216 subsection (b) of this section, a receiver shall post with the court a bond
217 that:

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

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

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

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

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

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

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

231 Sec. 9. (NEW) (*Effective October 1, 2020*) On appointment of a receiver,
232 the receiver has the status of a lien creditor under:

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

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

238 Sec. 10. (NEW) (*Effective October 1, 2020*) Except as provided by the
239 law of this state other than sections 1 to 28, inclusive, of this act, property
240 that a receiver or owner acquires after appointment of the receiver is
241 subject to a security agreement entered into before the appointment to
242 the same extent as if the court had not appointed the receiver.

243 Sec. 11. (NEW) (*Effective October 1, 2020*) (a) Unless the court orders
244 otherwise, on demand by a receiver:

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

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

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

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

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

264 Sec. 12. (NEW) (*Effective October 1, 2020*) (a) Except as limited by court
265 order or law of this state other than sections 1 to 28, inclusive, of this act,
266 a receiver may:

267 (1) Collect, control, manage, conserve and protect receivership
268 property;

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

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

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

277 (5) Seek and obtain instruction from the court concerning
278 receivership property, exercise of the receiver's powers and
279 performance of the receiver's duties;

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

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

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

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

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

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

293 (2) Make improvements to receivership property;

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

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

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

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

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

305 (c) A receiver shall:

306 (1) Prepare and retain appropriate business records, including a
307 record of each receipt, disbursement and disposition of receivership
308 property;

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

312 (3) File on the land records of the town where the real property is
313 located a copy of the order appointing the receiver and, if a legal
314 description of the real property is not included in the order, the legal
315 description;

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

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

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

323 Sec. 13. (NEW) (*Effective October 1, 2020*) (a) An owner shall:

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

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

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

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

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

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

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

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

348 (2) Sanction the failure as civil contempt.

349 Sec. 14. (NEW) (*Effective October 1, 2020*) (a) Except as provided in
350 subsection (d) of this section or ordered by the court, an order
351 appointing a receiver operates as a stay, applicable to all persons, of an
352 act, action or proceeding:

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

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

358 (b) Except as provided in subsection (d) of this section, the court may
359 enjoin an act, action or proceeding against or relating to receivership
360 property if the injunction is necessary to protect the property or facilitate
361 administration of the receivership.

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

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

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

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

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

372 (4) Commencement or continuation of an action or proceeding, or
373 enforcement of a judgment other than a money judgment in an action or
374 proceeding, by a governmental unit to enforce its police or regulatory
375 power; or

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

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

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

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

384 (2) Sanction the violation as civil contempt.

385 Sec. 15. (NEW) (*Effective October 1, 2020*) (a) With court approval, a
386 receiver may engage an attorney, accountant, appraiser, auctioneer,
387 broker or other professional to assist the receiver in performing a duty
388 or exercising a power of the receiver. The receiver shall disclose to the
389 court:

390 (1) The identity and qualifications of the professional;

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

392 (3) Any potential conflict of interest; and

393 (4) The proposed compensation.

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

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

405 Sec. 16. (NEW) (*Effective October 1, 2020*) (a) In this section, "good
406 faith" means honesty in fact and the observance of reasonable
407 commercial standards of fair dealing.

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

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

416 (d) A lien on receivership property which is extinguished by a
417 transfer under subsection (c) of this section attaches to the proceeds of
418 the transfer with the same validity, perfection and priority the lien had
419 on the property immediately before the transfer, even if the proceeds

420 are not sufficient to satisfy all obligations secured by the lien.

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

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

434 Sec. 17. (NEW) (*Effective October 1, 2020*) (a) In this section, "timeshare
435 interest" means an interest having a duration of more than three years
436 which grants its holder the right to use and occupy an accommodation,
437 facility or recreational site, whether improved or not, for a specific
438 period less than a full year during any given year.

439 (b) Except as provided in subsection (h) of this section, with court
440 approval, a receiver may adopt or reject an executory contract of the
441 owner relating to receivership property. The court may condition the
442 receiver's adoption and continued performance of the contract on terms
443 appropriate under the circumstances. If the receiver does not request
444 court approval to adopt or reject the contract within a reasonable time
445 after the receiver's appointment, the receiver is deemed to have rejected
446 the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

498 Sec. 18. (NEW) (*Effective October 1, 2020*) (a) A receiver is entitled to
499 all defenses and immunities provided by the law of this state other than
500 sections 1 to 28, inclusive, of this act for an act or omission within the
501 scope of the receiver's appointment.

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

505 Sec. 19. (NEW) (*Effective October 1, 2020*) A receiver may file or, if
506 ordered by the court, shall file an interim report that includes:

507 (1) The activities of the receiver since appointment or a previous
508 report;

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

511 (3) Receipts and dispositions of receivership property;

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

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

515 Sec. 20. (NEW) (*Effective October 1, 2020*) (a) Except as provided in
516 subsection (f) of this section, a receiver shall give notice of appointment
517 of the receiver to creditors of the owner by:

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

521 (2) Publication as directed by the court.

522 (b) Except as provided in subsection (f) of this section, the notice
523 required by subsection (a) of this section must specify the date by which
524 each creditor holding a claim against the owner which arose before
525 appointment of the receiver must submit the claim to the receiver. The
526 date specified must be at least ninety days after the later of notice under
527 subdivision (1) of subsection (a) of this section or last publication under
528 subdivision (2) of subsection (a) of this section. The court may extend
529 the period for submitting the claim. Unless the court orders otherwise,
530 a claim that is not submitted timely is not entitled to a distribution from
531 the receivership.

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

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

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

535 (3) Identify any property securing the claim;

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

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

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

541 (e) At any time before entry of an order approving a receiver's final
542 report, the receiver may file with the court an objection to a claim of a
543 creditor, stating the basis for the objection. The court shall allow or
544 disallow the claim according to the law of this state other than sections
545 1 to 28, inclusive, of this act.

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

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

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

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

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

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

561 Sec. 21. (NEW) (*Effective October 1, 2020*) (a) The court may award a
562 receiver from receivership property the reasonable and necessary fees
563 and expenses of performing the duties of the receiver and exercising the
564 powers of the receiver.

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

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

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

574 Sec. 22. (NEW) (*Effective October 1, 2020*) (a) The court may remove a
575 receiver for cause.

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

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

582 (d) The court may discharge a receiver and terminate the court's
583 administration of the receivership property if the court finds that
584 appointment of the receiver was improvident or that the circumstances
585 no longer warrant continuation of the receivership. If the court finds that
586 the appointment was sought wrongfully or in bad faith, the court may
587 assess against the person that sought the appointment:

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

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

592 Sec. 23. (NEW) (*Effective October 1, 2020*) (a) On completion of a
593 receiver's duties, the receiver shall file a final report including:

594 (1) A description of the activities of the receiver in the conduct of the
595 receivership;

596 (2) A list of receivership property at the commencement of the
597 receivership and any receivership property received during the
598 receivership;

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

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

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

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

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

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

610 Sec. 24. (NEW) (*Effective October 1, 2020*) (a) The court may appoint a
611 receiver appointed in another state, or that person's nominee, as an
612 ancillary receiver with respect to property located in this state or subject
613 to the jurisdiction of the court for which a receiver could be appointed
614 under sections 1 to 28, inclusive, of this act, if:

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

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

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

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

625 Sec. 25. (NEW) (*Effective October 1, 2020*) A request by a mortgagee for
626 appointment of a receiver, the appointment of a receiver or application
627 by a mortgagee of receivership property or proceeds to the secured
628 obligation does not:

629 (1) Make the mortgagee a mortgagee in possession of the real
630 property;

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

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

634 (4) Make the secured obligation unenforceable; or

635 (5) Limit any right available to the mortgagee with respect to the
636 secured obligation.

637 Sec. 26. (NEW) (*Effective October 1, 2020*) In applying and construing
638 sections 1 to 28, inclusive, of this act, consideration must be given to the
639 need to promote uniformity of the law with respect to its subject matter
640 among states that enact it.

641 Sec. 27. (NEW) (*Effective October 1, 2020*) Sections 1 to 28, inclusive, of
642 this act modify, limit and supersede the Electronic Signatures in Global
643 and National Commerce Act, 15 USC 7001 et seq., but do not modify,

644 limit or supersede Section 101(c) of said act, 15 USC 7001(c) or authorize
 645 electronic delivery of any of the notices described in Section 103(b) of
 646 said act, 15 USC 7003(b).

647 Sec. 28. (NEW) (*Effective October 1, 2020*) Sections 1 to 28, inclusive, of
 648 this act do not apply to a receivership for which the receiver was
 649 appointed before October 1, 2020.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2020</i>	New section
Sec. 2	<i>October 1, 2020</i>	New section
Sec. 3	<i>October 1, 2020</i>	New section
Sec. 4	<i>October 1, 2020</i>	New section
Sec. 5	<i>October 1, 2020</i>	New section
Sec. 6	<i>October 1, 2020</i>	New section
Sec. 7	<i>October 1, 2020</i>	New section
Sec. 8	<i>October 1, 2020</i>	New section
Sec. 9	<i>October 1, 2020</i>	New section
Sec. 10	<i>October 1, 2020</i>	New section
Sec. 11	<i>October 1, 2020</i>	New section
Sec. 12	<i>October 1, 2020</i>	New section
Sec. 13	<i>October 1, 2020</i>	New section
Sec. 14	<i>October 1, 2020</i>	New section
Sec. 15	<i>October 1, 2020</i>	New section
Sec. 16	<i>October 1, 2020</i>	New section
Sec. 17	<i>October 1, 2020</i>	New section
Sec. 18	<i>October 1, 2020</i>	New section
Sec. 19	<i>October 1, 2020</i>	New section
Sec. 20	<i>October 1, 2020</i>	New section
Sec. 21	<i>October 1, 2020</i>	New section
Sec. 22	<i>October 1, 2020</i>	New section
Sec. 23	<i>October 1, 2020</i>	New section
Sec. 24	<i>October 1, 2020</i>	New section
Sec. 25	<i>October 1, 2020</i>	New section
Sec. 26	<i>October 1, 2020</i>	New section
Sec. 27	<i>October 1, 2020</i>	New section
Sec. 28	<i>October 1, 2020</i>	New section

Statement of Purpose:

To adopt the Uniform Commercial Real Estate Receivership Act.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]