

1 AN ACT relating to the Uniform Commercial Real Estate Receivership Act.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 382A IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this chapter, unless the context requires otherwise:*

6 *(1) "Affiliate" means:*

7 *(a) With respect to an individual:*

8 *1. A spouse of the individual;*

9 *2. A lineal ancestor or descendant, whether by blood or adoption, of:*

10 *a. The individual; or*

11 *b. A spouse of the individual;*

12 *3. A spouse of an ancestor or descendant described in subparagraph 2.*
13 *of this paragraph;*

14 *4. A sibling, aunt, uncle, great-aunt, great-uncle, first cousin, niece,*
15 *nephew, grandniece, or grandnephew of the individual, whether*
16 *related by the whole or the half blood or adoption, or a spouse of any*
17 *of them; or*

18 *5. Any other individual occupying the residence of the individual; and*

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

20 *1. Another person that directly or indirectly controls, is controlled by, or*
21 *is under common control with the person;*

22 *2. An officer, director, manager, member, partner, employee, or trustee*
23 *or other fiduciary of the person; or*

24 *3. A spouse of, or an individual occupying the residence of, an individual*
25 *described in subparagraph 1. or 2. of this paragraph;*

26 *(2) "Executory contract" means a contract, including a lease, under which each*
27 *party has an unperformed obligation and the failure of a party to complete*

- 1 performance would constitute a material breach;
- 2 (3) "Governmental unit" means an office, department, division, bureau, board,
3 commission, or other agency of this state or a subdivision of this state;
- 4 (4) "Lien" means an interest in property which secures payment or performance of
5 an obligation;
- 6 (5) "Mortgage" means a record, however denominated, that creates or provides for a
7 consensual lien on real property or rents, even if it also creates or provides for a
8 lien on personal property;
- 9 (6) "Mortgagee" means a person entitled to enforce an obligation secured by a
10 mortgage;
- 11 (7) "Mortgagor" means a person that grants a mortgage or a successor in ownership
12 of the real property described in the mortgage;
- 13 (8) "Owner" means the person for whose property a receiver is appointed;
- 14 (9) "Person" means an individual, estate, business or nonprofit entity, public
15 corporation, government or governmental subdivision, agency, or
16 instrumentality, or other legal entity;
- 17 (10) "Proceeds" means the following property:
- 18 (a) Whatever is acquired on the sale, lease, license, exchange, or other
19 disposition of receivership property;
- 20 (b) Whatever is collected on, or distributed on account of, receivership
21 property;
- 22 (c) Rights arising out of receivership property;
- 23 (d) To the extent of the value of receivership property, claims arising out of the
24 loss, nonconformity, or interference with the use of, defects or infringement
25 of rights in, or damage to the property; or
- 26 (e) To the extent of the value of receivership property and to the extent payable
27 to the owner or mortgagee, insurance payable by reason of the loss or

1 nonconformity of, defects or infringement of rights in, or damage to the
2 property;

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

7 (12) "Receiver" means a person appointed by the court as the court's agent, and
8 subject to the court's direction, to take possession of, manage, and, if authorized
9 by this chapter or court order, transfer, sell, lease, license, exchange, collect, or
10 otherwise dispose of receivership property;

11 (13) "Receivership" means a proceeding in which a receiver is appointed;

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

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

18 (16) "Rents" means:

19 (a) Sums payable for the right to possess or occupy, or for the actual possession
20 or occupation of, real property of another person;

21 (b) Sums payable to a mortgagor under a policy of rental-interruption
22 insurance covering real property;

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

25 (d) Sums payable to terminate an agreement to possess or occupy real property
26 of another person;

27 (e) Sums payable to a mortgagor for payment or reimbursement of expenses

1 incurred in owning, operating, and maintaining real property or
 2 constructing or installing improvements on real property; or

3 (f) Other sums payable under an agreement relating to the real property of
 4 another person which constitute rents under any law of this state other than
 5 this chapter;

6 (17) "Secured obligation" means an obligation the payment or performance of which
 7 is secured by a security agreement;

8 (18) "Security agreement" means an agreement that creates or provides for a lien;

9 (19) "Sign" means with present intent to authenticate or adopt a record:

10 (a) To execute or adopt a tangible symbol; or

11 (b) To attach to or logically associate with the record an electronic sound,
 12 symbol, or process; and

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

16 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) Except as otherwise provided in subsection (2) of this section, the court may issue
 19 an order under this chapter only after notice and opportunity for a hearing
 20 appropriate in the circumstances.

21 (2) The court may issue an order under this chapter:

22 (a) Without prior notice if the circumstances require issuance of an order
 23 before notice is given;

24 (b) After notice and without a prior hearing if the circumstances require
 25 issuance of an order before a hearing is held; or

26 (c) After notice and without a hearing if no interested party timely requests a
 27 hearing.

1 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
2 READ AS FOLLOWS:

3 (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter
4 applies to a receivership for an interest in real property and any personal property
5 related to or used in operating the real property.

6 (2) This chapter does not apply to a receivership for an interest in real property
7 improved by one (1) to four (4) dwelling units unless:

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

11 (b) The interest secures an obligation incurred at a time when the property was
12 used or planned for use for agricultural, commercial, industrial, or
13 mineral-extraction purposes;

14 (c) The owner planned or is planning to develop the property into one (1) or
15 more dwelling units to be sold or leased in the ordinary course of the
16 owner's business; or

17 (d) The owner is collecting or has the right to collect rents or other income
18 from the property from a person other than an affiliate of the owner.

19 (3) This chapter does not apply to a receivership authorized by law of this state other
20 than this chapter in which the receiver is a governmental unit or an individual
21 acting in an official capacity on behalf of the unit.

22 (4) This chapter does not limit the authority of a court to appoint a receiver under
23 any law of this state other than this chapter.

24 (5) Unless displaced by a particular provision of this chapter, the principles of law
25 and equity supplement this chapter.

26 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
27 READ AS FOLLOWS:

1 *A court that appoints a receiver under this chapter has exclusive jurisdiction to direct*
 2 *the receiver and determine any controversy related to the receivership or receivership*
 3 *property.*

4 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
 5 READ AS FOLLOWS:

6 *(1) The court may appoint a receiver:*

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

10 *1. Is being subjected to or is in danger of waste, loss, dissipation, or*
 11 *impairment; or*

12 *2. Has been or is about to be the subject of a voidable transaction;*

13 *(b) After judgment:*

14 *1. To carry the judgment into effect; or*

15 *2. To preserve nonexempt real property pending appeal or when an*
 16 *execution has been returned unsatisfied and the owner refuses to*
 17 *apply the property in satisfaction of the judgment;*

18 *(c) In an action in which a receiver for real property may be appointed on*
 19 *equitable grounds; or*

20 *(d) During the time allowed for redemption, to preserve real property sold in an*
 21 *execution or foreclosure sale and secure its rents to the person entitled to*
 22 *the rents.*

23 *(2) In connection with the foreclosure or other enforcement of a mortgage, a*
 24 *mortgagee is entitled to appointment of a receiver for the mortgaged property if:*

25 *(a) Appointment is necessary to protect the property from waste, loss, transfer,*
 26 *dissipation, or impairment;*

27 *(b) The mortgagor agreed in a signed record to appointment of a receiver on*

- 1 default;
- 2 (c) The owner agreed, after default and in a signed record, to appointment of a
- 3 receiver;
- 4 (d) The property and any other collateral held by the mortgagee are not
- 5 sufficient to satisfy the secured obligation;
- 6 (e) The owner fails to turn over to the mortgagee proceeds or rents the
- 7 mortgagee was entitled to collect; or
- 8 (f) The holder of a subordinate lien obtains appointment of a receiver for the
- 9 property.
- 10 (3) The court may condition appointment of a receiver without prior notice under
- 11 subsection (2)(a) of Section 2 of this Act or without a prior hearing under
- 12 subsection (2)(b) of Section 2 of this Act on the giving of security by the person
- 13 seeking the appointment for the payment of damages, reasonable attorney's fees,
- 14 and costs incurred or suffered by any person if the court later concludes that the
- 15 appointment was not justified. If the court later concludes that the appointment
- 16 was justified, the court shall release the security.

17 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO

18 READ AS FOLLOWS:

- 19 (1) The court may not appoint a person as receiver unless the person submits to the
- 20 court a statement under penalty of perjury that the person is not disqualified.
- 21 (2) Except as otherwise provided in subsection (3) of this section, a person is
- 22 disqualified from appointment as receiver if the person:
- 23 (a) Is an affiliate of a party;
- 24 (b) Has an interest materially adverse to an interest of a party;
- 25 (c) Has a material financial interest in the outcome of the action, other than
- 26 compensation the court may allow the receiver;
- 27 (d) Has a debtor-creditor relationship with a party; or

1 (e) Holds an equity interest in a party, other than a noncontrolling interest in a
2 publicly traded company.

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

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

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

10 (c) Maintains with a party a deposit account as defined in KRS 355.9-102.

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

13 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
14 READ AS FOLLOWS:

15 (1) Except as otherwise provided in subsection (2) of this section, a receiver shall
16 post with the court a bond that:

17 (a) Is conditioned on the faithful discharge of the receiver's duties;

18 (b) Has one (1) or more sureties approved by the court;

19 (c) Is in an amount the court specifies; and

20 (d) Is effective as of the date of the receiver's appointment.

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

25 (3) The court shall authorize a receiver to act before the receiver posts the bond or
26 alternative security required by this section.

27 (4) A claim against a receiver's bond or alternative security must be made not later

1 than one year after the date the receiver is discharged.

2 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
3 READ AS FOLLOWS:

4 On appointment of a receiver, the receiver has the status of a lien creditor under:

5 (1) Article 9 of KRS Chapter 355 as to receivership property that is personal property
6 or fixtures; and

7 (2) KRS Chapter 382 as to receivership property that is real property.

8 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 382A IS CREATED TO
9 READ AS FOLLOWS:

10 Except as otherwise provided by law, property that a receiver or owner acquires after
11 appointment of the receiver is subject to a security agreement entered into before the
12 appointment to the same extent as if the court had not appointed the receiver.

13 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
14 TO READ AS FOLLOWS:

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

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

19 (b) Subject to subsection (3) of this section, a person that has possession,
20 custody, or control of receivership property shall turn the property over to
21 the receiver.

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

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

1 lien.

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

5 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
6 TO READ AS FOLLOWS:

7 (1) Except as limited by court order or law of this state other than this chapter, a
8 receiver may:

9 (a) Collect, control, manage, conserve, and protect receivership property;

10 (b) Operate a business constituting receivership property, including
11 preservation, use, sale, lease, license, exchange, collection, or disposition of
12 the property in the ordinary course of business;

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

16 (d) Assert a right, claim, cause of action, or defense of the owner which relates
17 to receivership property;

18 (e) Seek and obtain instruction from the court concerning receivership
19 property, exercise of the receiver's powers, and performance of the
20 receiver's duties;

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

25 (g) Engage a professional as provided in Section 14 of this Act;

26 (h) Apply to a court of another state for appointment as ancillary receiver with
27 respect to receivership property located in that state; and

- 1 (i) Exercise any power conferred by court order, this chapter, or law of this
2 state other than this chapter.
- 3 (2) With court approval, a receiver may:
- 4 (a) Incur debt for the use or benefit of receivership property other than in the
5 ordinary course of business;
- 6 (b) Make improvements to receivership property;
- 7 (c) Use or transfer receivership property other than in the ordinary course of
8 business as provided in Section 15 of this Act;
- 9 (d) Adopt or reject an executory contract of the owner as provided in Section 16
10 of this Act ;
- 11 (e) Pay compensation to the receiver as provided in Section 20 of this Act, and
12 to each professional engaged by the receiver as provided in Section 14 of
13 this Act;
- 14 (f) Recommend allowance or disallowance of a claim of a creditor as provided
15 in Section 19 of this Act; and
- 16 (g) Make a distribution of receivership property as provided in Section 19 of
17 this Act.
- 18 (3) A receiver shall:
- 19 (a) Prepare and retain appropriate business records, including a record of each
20 receipt, disbursement, and disposition of receivership property;
- 21 (b) Account for receivership property, including the proceeds of a sale, lease,
22 license, exchange, collection, or other disposition of the property;
- 23 (c) File with the office of the county clerk a copy of the order appointing the
24 receiver and, if a legal description of the real property is not included in the
25 order, the legal description;
- 26 (d) Disclose to the court any fact arising during the receivership which would
27 disqualify the receiver under Section 6 of this Act; and

1 (e) Perform any duty imposed by court order, this chapter, or law of this state
2 other than this chapter.

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

5 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
6 TO READ AS FOLLOWS:

7 (1) An owner shall:

8 (a) Assist and cooperate with the receiver in the administration of the
9 receivership and the discharge of the receiver's duties;

10 (b) Preserve and turn over to the receiver all receivership property in the
11 owner's possession, custody, or control;

12 (c) Identify all records and other information relating to the receivership
13 property, including a password, authorization, or other information needed
14 to obtain or maintain access to or control of the receivership property, and
15 make available to the receiver the records and information in the owner's
16 possession, custody, or control;

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

20 (e) Perform any duty imposed by court order, this chapter, or law of this state
21 other than this chapter.

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

25 (3) If a person knowingly fails to perform a duty imposed by this section, the court
26 may:

27 (a) Award the receiver actual damages caused by the person's failure,

1 reasonable attorney's fees, and costs; and

2 (b) Sanction the failure as civil contempt.

3 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
4 TO READ AS FOLLOWS:

5 (1) Except as otherwise provided in subsection (4) of this section or ordered by the
6 court, an order appointing a receiver operates as a stay, applicable to all persons,
7 of an act, action, or proceeding:

8 (a) To obtain possession of, exercise control over, or enforce a judgment
9 against receivership property; and

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

12 (2) Except as otherwise provided in subsection (4) of this section, the court may
13 enjoin an act, action, or proceeding against or relating to receivership property if
14 the injunction is necessary to protect the property or facilitate administration of
15 the receivership.

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

18 (4) An order under subsection (1) or (2) of this section does not operate as a stay or
19 injunction of:

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

22 (b) An act, action, or proceeding to perfect, or maintain or continue the
23 perfection of, an interest in receivership property;

24 (c) Commencement or continuation of a criminal proceeding;

25 (d) Commencement or continuation of an action or proceeding, or enforcement
26 of a judgment other than a money judgment in an action or proceeding, by
27 a governmental unit to enforce its police or regulatory power; or

1 (e) Establishment by a governmental unit of a tax liability against the owner or
 2 receivership property or an appeal of the liability.

3 (5) The court may void an act that violates a stay or injunction under this section.

4 (6) If a person knowingly violates a stay or injunction under this section, the court
 5 may:

6 (a) Award actual damages caused by the violation, reasonable attorney's fees,
 7 and costs; and

8 (b) Sanction the violation as civil contempt.

9 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 10 TO READ AS FOLLOWS:

11 (1) With court approval, a receiver may engage an attorney, accountant, appraiser,
 12 auctioneer, broker, or other professional to assist the receiver in performing a
 13 duty or exercising a power of the receiver. The receiver shall disclose to the court:

14 (a) The identity and qualifications of the professional;

15 (b) The scope and nature of the proposed engagement;

16 (c) Any potential conflict of interest; and

17 (d) The proposed compensation.

18 (2) A person is not disqualified from engagement under this section solely because of
 19 the person's engagement by, representation of, or other relationship with the
 20 receiver, a creditor, or a party. This chapter does not prevent the receiver from
 21 servicing in the receivership as an attorney, accountant, auctioneer, or broker
 22 when authorized by law.

23 (3) A receiver or professional engaged under subsection (1) of this section shall file
 24 with the court an itemized statement of the time spent, work performed, and
 25 billing rate of each person that performed the work and an itemized list of
 26 expenses. The receiver shall pay the amount approved by the court.

27 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 382A IS CREATED

1 TO READ AS FOLLOWS:

- 2 (1) In this section, "good faith" means honesty in fact and the observance of
3 reasonable commercial standards of fair dealing.
- 4 (2) With court approval, a receiver may use receivership property other than in the
5 ordinary course of business.
- 6 (3) With court approval, a receiver may transfer receivership property other than in
7 the ordinary course of business by sale, lease, license, exchange, or other
8 disposition. Unless the agreement of sale provides otherwise, a sale under this
9 section is free and clear of a lien of the person that obtained appointment of the
10 receiver, any subordinate lien, and any right of redemption but is subject to a
11 senior lien.
- 12 (4) A lien on receivership property which is extinguished by a transfer under
13 subsection (3) of this section attaches to the proceeds of the transfer with the
14 same validity, perfection, and priority the lien had on the property immediately
15 before the transfer, even if the proceeds are not sufficient to satisfy all obligations
16 secured by the lien.
- 17 (5) A transfer under subsection (3) of this section may occur by means other than a
18 public auction sale. A creditor holding a valid lien on the property to be
19 transferred may purchase the property and offset against the purchase price part
20 or all of the allowed amount secured by the lien, if the creditor tenders funds
21 sufficient to satisfy in full the reasonable expenses of transfer and the obligation
22 secured by any senior lien extinguished by the transfer.
- 23 (6) A reversal or modification of an order approving a transfer under subsection (3)
24 of this section does not affect the validity of the transfer to a person that acquired
25 the property in good faith or revive against the person any lien extinguished by
26 the transfer, whether the person knew before the transfer of the request for
27 reversal or modification, unless the court stayed the order before the transfer.

1 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
2 TO READ AS FOLLOWS:

3 (1) In this section, "timeshare interest" means an interest having a duration of more
4 than three years (3) which grants its holder the right to use and occupy an
5 accommodation, facility, or recreational site, whether improved or not, for a
6 specific period less than a full year during any given year.

7 (2) Except as otherwise provided in subsection (8) of this section, with court
8 approval, a receiver may adopt or reject an executory contract of the owner
9 relating to receivership property. The court may condition the receiver's adoption
10 and continued performance of the contract on terms appropriate under the
11 circumstances. If the receiver does not request court approval to adopt or reject
12 the contract within a reasonable time after the receiver's appointment, the
13 receiver is deemed to have rejected the contract.

14 (3) A receiver's performance of an executory contract before court approval under
15 subsection (2) of this section of its adoption or rejection is not an adoption of the
16 contract and does not preclude the receiver from seeking approval to reject the
17 contract.

18 (4) A provision in an executory contract which requires or permits a forfeiture,
19 modification, or termination of the contract because of the appointment of a
20 receiver or the financial condition of the owner does not affect a receiver's power
21 under subsection (2) of this section to adopt the contract.

22 (5) A receiver's right to possess or use receivership property pursuant to an executory
23 contract terminates on rejection of the contract under subsection (2) of this
24 section. Rejection is a breach of the contract effective immediately before
25 appointment of the receiver. A claim for damages for rejection of the contract
26 shall be submitted by the later of:

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

- 1 **(b) Thirty (30) days after the court approves the rejection.**
- 2 **(6) If at the time a receiver is appointed, the owner has the right to assign an**
3 **executory contract relating to receivership property, the receiver may assign the**
4 **contract with court approval.**
- 5 **(7) If a receiver rejects under subsection (2) of this section an executory contract for**
6 **the sale of receivership property that is real property in possession of the**
7 **purchaser or a real property timeshare interest, the purchaser may:**
- 8 **(a) Treat the rejection as a termination of the contract, and in that case the**
9 **purchaser has a lien on the property for the recovery of any part of the**
10 **purchase price the purchaser paid; or**
- 11 **(b) Retain the purchaser's right to possession under the contract, and in that**
12 **case the purchaser shall continue to perform all obligations arising under**
13 **the contract and may offset any damages caused by nonperformance of an**
14 **obligation of the owner after the date of the rejection, but the purchaser has**
15 **no right or claim against other receivership property or the receiver on**
16 **account of the damages.**
- 17 **(8) A receiver may not reject an unexpired lease of real property under which the**
18 **owner is the landlord if:**
- 19 **(a) The tenant occupies the leased premises as the tenant's primary residence;**
- 20 **(b) The receiver was appointed at the request of a person other than a**
21 **mortgagee; or**
- 22 **(c) The receiver was appointed at the request of a mortgagee and:**
- 23 **1. The lease is superior to the lien of the mortgage;**
- 24 **2. The tenant has an enforceable agreement with the mortgagee or the**
25 **holder of a senior lien under which the tenant's occupancy will not be**
26 **disturbed as long as the tenant performs its obligations under the**
27 **lease;**

- 1 3. The mortgagee has consented to the lease, either in a signed record or
 2 by its failure timely to object that the lease violated the mortgage; or
 3 4. The terms of the lease were commercially reasonable at the time the
 4 lease was agreed to and the tenant did not know or have reason to
 5 know that the lease violated the mortgage.

6 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 7 TO READ AS FOLLOWS:

- 8 (1) A receiver is entitled to all defenses and immunities provided by law for an act or
 9 omission within the scope of the receiver's appointment.
 10 (2) A receiver may be sued personally for an act or omission in administering
 11 receivership property only with approval of the court that appointed the receiver.

12 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 13 TO READ AS FOLLOWS:

- 14 A receiver may file or, if ordered by the court, shall file an interim report that includes:
 15 (1) The activities of the receiver since appointment or a previous report;
 16 (2) Receipts and disbursements, including a payment made or proposed to be made to
 17 a professional engaged by the receiver;
 18 (3) Receipts and dispositions of receivership property;
 19 (4) Fees and expenses of the receiver and, if not filed separately, a request for
 20 approval of payment of the fees and expenses; and
 21 (5) Any other information required by the court.

22 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 23 TO READ AS FOLLOWS:

- 24 (1) Except as otherwise provided in subsection (6) of this section, a receiver shall give
 25 notice of appointment of the receiver to creditors of the owner by:
 26 (a) Deposit for delivery through first-class mail or other commercially
 27 reasonable delivery method to the last known address of each creditor; and

- 1 (b) Publication as directed by the court.
- 2 (2) Except as otherwise provided in subsection (6) of this section, the notice required
3 by subsection (1) of this section shall specify the date by which each creditor
4 holding a claim against the owner which arose before appointment of the receiver
5 must submit the claim to the receiver. The date specified shall be at least ninety
6 (90) days after the later of notice under subsection (1)(a) of this section or last
7 publication under subsection (1)(b) of this section. The court may extend the
8 period for submitting the claim. Unless the court orders otherwise, a claim that is
9 not submitted timely is not entitled to a distribution from the receivership.
- 10 (3) A claim submitted by a creditor under this section shall:
- 11 (a) State the name and address of the creditor;
12 (b) State the amount and basis of the claim;
13 (c) Identify any property securing the claim;
14 (d) Be signed by the creditor under penalty of perjury; and
15 (e) Include a copy of any record on which the claim is based.
- 16 (4) An assignment by a creditor of a claim against the owner is effective against the
17 receiver only if the assignee gives timely notice of the assignment to the receiver
18 in a signed record.
- 19 (5) At any time before entry of an order approving a receiver's final report, the
20 receiver may file with the court an objection to a claim of a creditor, stating the
21 basis for the objection. The court shall allow or disallow the claim according to
22 law of this state other than this chapter.
- 23 (6) If the court concludes that receivership property is likely to be insufficient to
24 satisfy claims of each creditor holding a perfected lien on the property, the court
25 may order that:
- 26 (a) The receiver need not give notice under subsection (1) of this section of the
27 appointment to all creditors of the owner, but only such creditors as the

1 court directs; and

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

3 (7) Subject to Section 20 of this Act:

4 (a) A distribution of receivership property to a creditor holding a perfected lien
 5 on the property shall be made in accordance with the creditor's priority
 6 under law of this state other than this chapter; and

7 (b) A distribution of receivership property to a creditor with an allowed
 8 unsecured claim shall be made as the court directs according to law of this
 9 state other than this chapter.

10 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 11 TO READ AS FOLLOWS:

12 (1) The court may award a receiver from receivership property the reasonable and
 13 necessary fees and expenses of performing the duties of the receiver and
 14 exercising the powers of the receiver.

15 (2) The court may order one (1) or more of the following to pay the reasonable and
 16 necessary fees and expenses of the receivership, including reasonable attorney's
 17 fees and costs:

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

20 (b) A person whose conduct justified or would have justified the appointment of
 21 the receiver under subsection (1)(a) of Section 5 of this Act.

22 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 23 TO READ AS FOLLOWS:

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

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

26 (3) If the court finds that a receiver that resigns or is removed, or the representative
 27 of a receiver that is deceased, has accounted fully for and turned over to the

1 successor receiver all receivership property and has filed a report of all receipts
2 and disbursements during the service of the replaced receiver, the replaced
3 receiver is discharged.

4 (4) The court may discharge a receiver and terminate the court's administration of
5 the receivership property if the court finds that appointment of the receiver was
6 improvident or that the circumstances no longer warrant continuation of the
7 receivership. If the court finds that the appointment was sought wrongfully or in
8 bad faith, the court may assess against the person that sought the appointment:

9 (a) The fees and expenses of the receivership, including reasonable attorney's
10 fees and costs; and

11 (b) Actual damages caused by the appointment, including reasonable attorney's
12 fees and costs.

13 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
14 TO READ AS FOLLOWS:

15 (1) On completion of a receiver's duties, the receiver shall file a final report
16 including:

17 (a) A description of the activities of the receiver in the conduct of the
18 receivership;

19 (b) A list of receivership property at the commencement of the receivership and
20 any receivership property received during the receivership;

21 (c) A list of disbursements, including payments to professionals engaged by the
22 receiver;

23 (d) A list of dispositions of receivership property;

24 (e) A list of distributions made or proposed to be made from the receivership
25 for creditor claims;

26 (f) If not filed separately, a request for approval of the payment of fees and
27 expenses of the receiver; and

1 (g) Any other information required by the court.

2 (2) If the court approves a final report filed under subsection (1) of this section and
 3 the receiver distributes all receivership property, the receiver is discharged.

4 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 5 TO READ AS FOLLOWS:

6 (1) The court may appoint a receiver appointed in another state, or that person's
 7 nominee, as an ancillary receiver with respect to property located in this state or
 8 subject to the jurisdiction of the court for which a receiver could be appointed
 9 under this chapter, if:

10 (a) The person or nominee would be eligible to serve as receiver under Section
 11 6 of this Act; and

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

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

16 (3) Unless the court orders otherwise, an ancillary receiver appointed under
 17 subsection (1) of this section has the rights, powers, and duties of a receiver
 18 appointed under this chapter.

19 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
 20 TO READ AS FOLLOWS:

21 A request by a mortgagee for appointment of a receiver, the appointment of a receiver,
 22 or application by a mortgagee of receivership property or proceeds to the secured
 23 obligation does not:

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

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

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

1 **(4) Make the secured obligation unenforceable; or**

2 **(5) Limit any right available to the mortgagee with respect to the secured obligation.**

3 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
4 TO READ AS FOLLOWS:

5 **In applying and construing this chapter, consideration shall be given to the need to**
6 **promote uniformity of the law with respect to its subject matter among states that enact**
7 **it.**

8 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
9 TO READ AS FOLLOWS:

10 **This chapter modifies, limits, or supersedes the Electronic Signatures in Global and**
11 **National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify, limit, or**
12 **supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic**
13 **delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec.**
14 **7003(b).**

15 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 382A IS CREATED
16 TO READ AS FOLLOWS:

17 **This chapter does not apply to a receivership for which the receiver was appointed**
18 **before the effective date of this Act.**

19 ➔Section 28. This Act may be cited as the Kentucky Uniform Commercial Real
20 Estate Receivership Act.