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INSTITUTE

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Business Track

Bankruptcy Alternatives and High Times

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I. **BANKRUPTCY ALTERNATIVES IN GENERAL (USING WISCONSIN AS A GUIDE)**

A. **Chapter 128: Voluntary Receiverships with an Assignment, Involuntary Receiverships**

- i. “The Court, within the proper county may sequester the property of a debtor and appoint a receiver therefore: (a) when an execution against judgment debtor is returned unsatisfied in whole or in part. (b) When a corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights”. Wis. Stat. § 128.08.
- ii. Basics
 1. Goal: Sell assets to obtain the highest and best net value for the debtor’s creditors and other parties in interest with a fiduciary in place and a court approval process.
 2. Based on the Bankruptcy Act, Chapter 128 is a constitutional alternative to federal bankruptcy proceedings, though there are significant differences between these two approaches.
 3. Chapter 128 Receivers are officers of the court and have a duty to act for the benefit of all of a debtor’s creditors.
 4. If it makes sense, allows for Receiver to operate the business and sell the business assets while the business is operating.
- iii. Provides for Claim Process and Orderly Distribution. Wis. Stat § 128.14, 128.15, 128.17.
- iv. Voluntary Receivership Proceedings

1. The debtor makes a voluntary assignment for the benefit of its creditors of all its assets to an assignee. Receiver accepts.
 2. The assignee/intended receiver files the assignment, takes possession of the assets, furnishes a bond.
 3. The court enters an order appointing the assignee as receiver pursuant to Chapter 128. *The terms of the Order rule everything.*
- v. Involuntary Receivership Proceedings
1. Creditors may initiate an involuntary receivership proceeding when:
 - a. An execution against a judgment debtor is returned unsatisfied in whole or in part; or
 - b. A corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights. Wis. Stat. § 128.08.
 2. Under either of these scenarios, and upon application by the petitioning creditor, the Court must appoint as Receiver the person nominated in the petition, subject to removal.
 3. As in voluntary proceedings, the Receiver must furnish a bond, unless otherwise ordered by the court. Wis. Stat. § 128.09.
 4. Timing, procedural issues with involuntary appointments.

B. Benefits of Chapter 128 Receiverships

- i. Buyer obtains a state court order to purchase the business assets free and clear of all liens, claims, and encumbrances.
- ii. Chapter 128 filings enjoin creditors from taking actions to proceed against the debtor (at least in Wisconsin).
- iii. Usually faster and cheaper than bankruptcy proceedings.
- iv. Room for flexibility and creativity in the Receiver's administration of the estate.
- v. Receivers may recover preferential transfers and avoid liens that arose within the four months prior to filing the receivership action. Wis. Stat. § 128.07; 128.11.

C. Things to Watch Out for with Chapter 128 Receiverships

- i. Secured creditors control much of the receivership proceedings because without their support and consent, the secured creditors may recover their collateral and refuse to participate in the receivership proceedings, and they are often a lender to the receivership.
 - ii. Chapter 128 does not specifically address the assumption and assignment of executory contracts and leases. Everything becomes a negotiation.
 - iii. Upon the filing of an involuntary bankruptcy proceeding, Chapter 128 proceedings may be suspended, subject to 11 U.S.C. § 543(d).
 - iv. There will be a sale of some kind, even if it is a reorganization by sale. No reorganization in a Chapter 11 sense. discharge is available.
 - v. Does not have teeth in dealing with federal government agencies and issues including tax, labor, ERISA.
 - vi. Limitations in suing for breach of fiduciary duty. *See, Beloit Liquidating Trust v. Grede*, 2004 WI 39; *Polsky v. Virnich*, 2010 WI App 20.
- D. “Selfish” Receivers to Enforce Judgments: A receiver may be appointed by the judgment, or after judgment, to carry it into effect or to dispose of the property according to the judgment. Wis. Stat. § 813.16(2).
- E. Foreclosure Receivers. A receiver may be appointed on the application of either party, when the applying party establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired. Wis. Stat. § 813.16(1).
- F. Receivers Pending Appeal. A receiver may be appointed to preserve the property during the pendency of an appeal; or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment or in an action by a creditor. Wis. Stat. § 813.16(3).
- G. General Insolvency. A receiver may be appointed when a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights. Wis. Stat. § 813.16(4).
- H. The Supplemental Receiver of Wis Stat. § 816.04 – The Post Judgment Collection Plan: “A receiver may be appointed but before appointing a receiver the court or judge shall ascertain, if practicable, whether any other supplementary proceedings are pending against the judgment debtor, and if there be any, the plaintiff therein shall have notice to appear and shall have notice of all subsequent proceedings in relation to such receivership. There shall be but one receivership at any time.” Of limited value after *Associated Bank N.A. v. Collier*, 2014 WI 62.

- I. Shareholder Disputes: **Wis. Stat § 180.1431(2) & § 180.1432** “A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver pendente lite with all the powers and duties that the court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.” (Wis. Stat. § 180.1431(2))

 “A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.” (Wis. Stat. § 180.1432(1)).
- J. Fraudulent Transfers. **Wis Stat § 242.07(c)2** –“In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in s. 242.08, may obtain any of the following...Appointment of a receiver to take charge of the asset transferred or of other property of the transferee....”
- K. Family Law. **Wis Stat § 767.57(5)** – “The court may appoint a receiver or trustee, as necessary, to receive any payments ordered under this chapter, to invest and pay over the income for the maintenance of the spouse or the support and education of any of the children described in s. 767.511(4), or to pay over the principal sum in the amount and at the times that the court directs. The court may require the receiver or trustee to post bond, with or without sureties, in the amount that the court directs.”

II. MINNESOTA STATUTORY RECEIVERSHIPS

- A. The statute became effective on August 1, 2012. *See* Minn. Stat. § 576.
- B. Purposes of the statute.
 1. Combine hodgepodge law and practice into a codified form.
 2. Advance best practices within receiverships.
- C. General receiver versus limited receiver: Receiver over a specific asset (a “limited” receiver) versus an entity or all of its assets (a “general” receiver). *See* Minn. Stat. § 576.24 (2012).
 1. Both have power over receivership property, can incur or pay expenses, asserts rights and claims related to receivership property. Minn. Stat. § 576.29(1)(a) (2102).
 2. General receiver also can assert any claims of a respondent, pursue fraudulent transfer claims, use subpoena power, operate any business constituting receivership property in ordinary course, or use and sell

property other than in ordinary course with court permission. Minn. Stat. § 579.29(1)(b).

D. Basis for Appointment

1. Receivership may have benefits over other processes, including removal of respondent from control of property, preserve status quo, disclosure, sell receivership property, pursue creditor claims, and supervision of court.
2. Receivership may, however, have certain limitations or disadvantages as compared to other processes.

E. Grounds for Appointment

1. Before judgment to protect party with apparent right to property that is the subject of the action and in the possession of an adverse party with danger of loss or material impairment to rents or profits. Minn. Stat. § 576.25 subd. 2.
2. In or after judgment to carry the judgment into effect, to preserve property pending appeal, or when the judgment remains unsatisfied. Minn. Stat. § 576.25 subd. 3.
3. When a corporation or other entity is dissolved, insolvent, in imminent danger of insolvency, or as provided for under applicable corporate law. Minn. Stat. § 576.25 subd. 4.
4. As part of foreclosure proceeding.
5. Where equitable.

F. Process

1. A receiver may be appointed as an ancillary remedy to an action by motion. Minn. Stat. § 576.25 subd. 6 & 7.
2. The statute also provides that courts may appoint a receiver on an emergency basis. *See* Minn. Stat. § 576.25, subd. 7.
3. Know your audience, i.e. the court of general jurisdiction.

G. Stays

1. The statute provides for an automatic stay of certain actions, including interference with receivership property. Minn. Stat. § 576.42 (2012).
2. General receivership also stays actions that were or could have been commenced before receivership and actions against respondent or receiver.

3. There are several recognized exceptions to the stay, including setoff, maintain perfected interest, police powers, bankruptcy filing.

H. SALES FREE AND CLEAR

1. A general (not limited) receiver may seek court approval to sell receivership property “free and clear of all liens.” Minn. Stat. § 576.46 (2012).
2. Property may not be sold free and clear of certain liens such as for unpaid real estate taxes or federal tax liens.
3. Any owner of the property or holder of a lien on the property may file an objection, and secured creditor can credit bid.
4. All liens that encumber the receivership property will transfer and attach to the proceeds of the sale, net of reasonable expenses approved by the Court.

I. EXECUTORY CONTRACTS

1. The receiver succeeds to the position of the respondent as to executory contracts. Minn. Stat. § 576.45, subd. 1.
2. With court approval, the receiver may assign the contracts to third parties to the extent permitted in the contracts. Minn. Stat. § 576.45, subd. 2.
3. The receiver cannot assign contract with “anti-assignment” clause. Minn. Stat. § 576.45, subd. 2.
4. The statute also provides for the termination of the executory contracts with court approval and the resulting claims. Minn. Stat. § 576.45, subd. 3.

III. THE MISSOURI COMMERCIAL RECEIVERSHIP ACT (“MCRA” CITED AS RSMo 515.500 *et seq.*)¹

A. Initiating a Receivership in Missouri

1. A receiver may be appointed in Missouri as an independent action. RSMo §515.510.6. A receiver may also be requested by motion as relief ancillary to other matters. A non-exclusive list of the instances reflecting

¹ Peterson and Johnson, MISSOURI COMMERCIAL RECEIVERSHIP ACT GUIDEBOOK, Missouri Bar (2017). The full Guidebook on the Missouri Commercial Receivership Act can be purchased at <https://mobarcle.mobar.org/item/commercial-receivership-act-guidebook-328966>. The Guidebook provides an overview receivership administration and includes appointment forms for general and limited receivers, receiver’s oath, bonds, forms of notices, and a due dates checklist. It also includes the indexed statutory text.

instances in which the appointment of a receiver may be sought is set forth at RSMo §515.510.1(1)-(14).

2. MCRA, which was enacted in 2016, does not wholly displace prior law. Instead, the MCRA restates in its text the entirety of the (brief) Missouri receivership statute in existence prior to the enactment of the MCRA. §515.510.1.

B. Limited Receivers

1. In Missouri, there are under MCRA two types of possible receivers: Limited and general.
2. A limited receiver is a receiver that takes control of a limited corpus of assets, which generally does not include the management rights of the debtor entity. RSMo §515.515. For a receiver to be “limited” in nature, the order appointing the receiver should indicate that a limited receivership is intended. The appointment order must also contain a description of the property placed into the receivership estate. RSMo §515.515; §515.510.4. If no specification that a limited receiver is intended, the receiver will be presumed to be a general receiver.

- C. General Receivers. A general receiver is a receiver entrusted with substantially all of the debtor’s non-exempt property, including the rights of management. §515.510.4; §515.515. In practice, this means the receiver displaces the board and executives of the company, though he or she may engage those executives subject to the receiver’s authority.

D. Due Process

1. Ex parte appointments of a receiver are disfavored, but not disallowed. However, where an appointment of a receiver is made without a hearing, there is substantial risk that a defendant or other party in interest could move to vacate the appointment, which litigation could be extensive and may hamper the receiver’s ability to perform his or her duties. Best practices include calling up any motion to appoint a receiver for a hearing, excepting only exceptional or urgent circumstances.

2. When seeking the appointment of a receiver, the requesting party must give at least seven (7) days notice. RSMo §515.510.3. The court may shorten or expand the notice period upon good cause shown. *Id.*
3. Notice to others: After his or her appointment, and within ten (10) business days, a receiver must give notice of his or her appointment to “parties in interest,” including the Missouri Secretary of State and state and federal taxing authorities. §515.520. This requirement may be delayed depending on debtor cooperation. In Missouri, a “party in interest” is (1) the debtor, (2) any party to the underlying action, (3) any person with an ownership interest or lien against estate property or property sought to become estate property, (4) any person that has an “interest that will be affected” by particular matters presented in the receivership, and (5) in a general receivership all creditors of the debtor. RSMo §515.505(15).
4. A general receiver also shall give notice of his or her appointment by publication. RSMo §515.520.2.
5. Importantly, neither joinder of nor intervention by “parties in interest” is necessary for the receiver to perform his or her duties. *See Id.* By providing notice to parties in interest, such persons are alerted of proceedings and are authorized to participate in proceedings should they choose to do so. RSMo §515.610. Whether they participate or not, creditors and parties in interest given notice of receivership proceedings may be bound by court rulings. e.g. RSMo §515.610;
6. MCRA requires debtor cooperation with the receiver’s reasonable requests for documents and information. RSMo §515.520.3.

E. Receiver’s Bond, Security

1. A receiver must execute a bond in an amount specified by the court. The bond runs for the benefit of persons having an interest in the receivership proceeding or estate property, and in favor of state agencies. RSMo §515.530.
2. The appointment of a receiver may also be conditioned upon the giving of security by the party requesting the appointment of a receiver. RSMo §515.510.5. Such security should be sufficient to compensate any person suffering costs and/or damages as a result of the receiver’s appointment

or if it is later determined that the receiver's appointment was wrongfully procured. *Id.*

F. Judicial Immunity, Suit Against Receiver

1. A receiver is an arm of the court. A receiver is not a plaintiff or defendant "party" to the litigation. The receiver is a fiduciary with duties running to the receivership estate as directed by the court, and subject to the resources made available to carry out his or her duties. In Missouri, a receiver (and his or her agents and professionals, including counsel) is protected by judicial immunity for acts and omissions arising out of or performed in connection with the appointment. RSMo §515.600.
2. In Missouri, only a successor receiver may recover as against a predecessor receiver. Such recoveries are limited to the value of estate property. *Id.* Certain exceptions to this general rule are set forth at RSMo §515.600.2. Leave of the appointing court to bring an action against a receiver is required, akin to the *Barton* doctrine.

G. Powers of a Missouri Receiver

3. **Judicial Lien Priority.** A receiver appointed pursuant to the MCRA stands in the position of a judicial lien creditor arising as of the date of the receiver's appointment. Such judicial lien status applies as to all assets placed into the receiver's hands. RSMo §515.535.
4. **60-day Stay of Certain Proceedings.** In Missouri, the appointment of a general, but not a limited receiver, automatically stays for a period of sixty (60) days the commencement or continuation of judicial, administrative, or other actions or proceedings against the debtor, and stays the enforcement of judgments against the estate property. RSMo §515.575.1-2. The court may shorten or expand the stay pursuant to RSMo §515.575.1.
 - a. An appointment order may not stay proceedings in foreign jurisdictions. Ancillary receivership proceedings may be required to extend a receiver's powers outside of Missouri.
 - b. The stay does not enjoin criminal proceedings, paternity, maintenance, alimony or support proceedings, certain acts maintain or continue perfection of an interest in estate property, actions by governmental units to enforce a police or regulating power, enforcement of non-money judgments by governmental bodies in furtherance of the exercise of police or regulatory powers, exercise of rights of setoff, establishment of any tax liability, and any state court action pending against the debtor unless and until transcriptions of the receiver's appointment order is made. RSMo §515.575.3(1)-(8).
5. **Receiver Powers.** A receiver has broad powers to act in debtor's stead. RSMo §515.545 sets forth a list of such powers, as conferred by statute. In all instances, the appointing court retains the authority to tailor receiver powers. RSMo §515.545.3.
6. **Receiver Duties.** A receiver shall notify state and federal taxing authorities and applicable regulatory agencies of the receiver's appointment, and must record in appropriate land records notice of his or her appointment as to any real property. A general receiver must also file with the court certain periodic schedules or reprot. RSMo

§515.570. The court has broad authority to impose additional duties on the receiver. RSMo §515.545.2(4).

7. **Debtor's Duties.** A debtor must cooperate with certain receiver informational requests of the receiver so the receiver can effectively give notice of his or her appointment to parties in interest. RSMo §515.520.3. A debtor must also, within fourteen (14) days of the receiver's appointment, provide the receiver all information and data necessary to enable the receiver to make reports to the court. RSMo §515.555.1(1)(3); §515.560. The debtor must assist the receiver and cooperate with the receiver in the receiver's efforts to meet his or her obligations imposed by the appointment order. RSMo §515.555.1(2). A debtor must also submit to examination. RSMo §515.555.1(4),(5).
8. **Third Party Duties.** Third parties are required to turn over to the receiver, upon demand, any estate property within their possession. RSMo §515.550. The MCRA provides a process governing turn over for those instances where there is a dispute regarding rights of possession. RSMo §515.550.
9. **Public Utilities.** To enable the receiver's transition into office, a public utility may not discontinue service to estate property without first giving the receiver fifteen (15) days notice, or such other notice as may be required by the rules of the public service commission. Utilities that violate MCRA requirements as set forth at Section §515.580 may be subject to remedial measures by the public service commission. Public utilities that are not regulated by the commission are subject to enforcement by the receivership's appointing court. RSMo §515.580.3.

H. Special Processes. A receivership's purposes include the preservation and protection of estate assets for the benefit of stakeholders. Receivership therefore offers several specialized legal processes to maintain and preserve business operations and to protect asset values.

1. **Contracts and Leases.** MCRA provides procedures for the efficient assumption or rejection of "executory" contracts. RSMo §515.585. A receiver may assume or to reject any executory contract or unexpired lease of the debtor. RSMo §515.585.1. The court may however condition the receiver's assumption of an executory contract on such terms and conditions as are just and proper. *Id.* Motions practice is required to assume or reject executory contracts and unexpired leases. RSMo §515.585.1.

- a. A receiver may not assume an executory contract without consent of contractual counter-parties if applicable law would excuse the counter-party or from accepting performance from anyone other than the debtor, or where the contract is a contract to extend credit, or where the contract expires by its terms prior to assumption. RSMo §515.585.5.
 - b. If a receiver rejects an executory contract involving the sale or lease of real property or the license of intellectual property, special rules apply to protect the rights of the contract counter-parties. RSMo §515.585.7.
2. **Financing.** If a receiver is authorized to operate the debtor's business, he or she may obtain unsecured credit in the ordinary course of that business. RSMo §515.590.1. For non-ordinary course credit, or for secured credit, the receiver must obtain court approval. RSMo §515.590.2.
3. **Legal Proceedings.** A receiver in Missouri may sue and be sued in his or her capacity as receiver of the estate, and may be substituted in any action against the debtor that was pending when the receiver was appointed. Venue for actions involving a receiver are in the court in which the receiver was appointed. Transfer of venue rights of a receiver are inapplicable to state agencies. RSMo §515.595.4.
4. **Employment of Professionals.** A receiver may employ professionals including attorneys. RSMo §515.605. Respecting law or accounting firms, investment bankers, and property brokers, the court shall determine if any actual conflict or inappropriate appearance of conflict exists. MCRA does not prohibit employment of a professional solely because the professional has or had a relationship with a party in interest. RSMo §515.605. Rules governing professional conduct would however still apply.
5. **Claims Administration.** If distributions to unsecured creditors is to occur, a system of creditor priorities is set forth at RSMO §515.620. Creditor priorities conform to the priorities applicable under other areas of the law. MCRA also contains a process by which creditors can document their claims for the receiver and the receiver can object to claims as appropriate.

6. **Secured Claims.** Creditor distributions are made pursuant to RSMo §515.625. MCRA specifically provides that the receivership proceedings do not alter a security interest (§515.630). Interest is allowed on claims at the legal rate (or other rate, if applicable to a particular claim). RSMo §515.635.
7. **Use, Sale, and Lease of Property**
 - a. Any use, sale, or lease of property by the receiver must be approved by the court unless the usage, sale, or lease is an activity within the ordinary course of the debtor's business. RSMo §515.645.1.
 - b. A general receiver may sell property free and clear of liens, claims, and all rights of redemption unless the subject property (1) is agricultural land used principally in the production of crops, livestock, or aquaculture, (2) the property is a homestead and the owner has not consented to the sale, or (3) a party in interest in the case objects to the sale and the court determines that the sale will yield less for the estate than would be realized within a reasonable time (such as by more comprehensive marketing efforts). RSMo §515.645.2. Upon any free and clear sale, liens attach to the sale proceeds in the same priority as existed in regard to the property itself RSMo §515.645. Reasonable sale expenses may however be charged against sale proceeds. *Id.*
 - c. If a sale is performed by way of public auction, and the successful bidder is a lienholder, such lienholder may credit bid its lien as against the purchase price. RSMo §515.645.3. Where there is a dispute regarding the amount owing to a senior lienholder, the court may order the successful bidder to provide adequate security while the underlying dispute is resolved. §515.645.3.
 - d. A receiver stands in the position of the debtor. If the debtor was a co-owner of property placed into receivership, the receiver's rights are as a co-owner. RSMo §515.645.4.

- I. Out-of-State Receivership Property. A receivership order is binding upon the parties to the receivership proceeding and persons over whom the receivership court establishes jurisdiction, whether through the various notice procedures set forth under MCRA, or through joinder and intervention practice pursuant to generally applicable civil rules. A receiver may apply foreign courts to establish control over, or to administer, property in foreign jurisdictions. Similarly, receivers appointed outside of Missouri may apply to the courts of Missouri for an ancillary receivership here. RSMo §515.650.2.

- J. Termination and Discharge. A receiver may be removed on motion, for failure to perform his or her obligations pursuant to the court's appointment order. Upon removal, the court may appoint a successor receiver. Where estate assets are fully administered and the receiver accounts for estate property and all receipts and disbursements, the court may discharge a receiver. RSMo §515.655. A receiver requesting discharge shall make his or her request by motion, and shall provide a final report accounting for the receipt and dispositions of all estate property. RSMo §515.660. Upon discharge, the receiver has no further duties. RSMo §515.660.4. A court may terminate a receivership at any time. RSMo §515.660.5.

- K. Conclusion. Caselaw within helps guide courts and practitioners through the receivership process. Missouri caselaw remains generally applicable to receivership proceedings in Missouri by virtue of the incorporation into MCRA of the entirety of the previous Missouri receivership statute. See §515.510.1 (restating prior statute and excepting from MCRA discrete statutes governing receiverships in particular instances). Thus, unless prior decisional law is contradicted and superseded by MCRA, it remains valid as precedent.

RECEIVERSHIP ACT
Act 16 of 2018

AN ACT to enact the receivership act; to provide for the appointment of receivers to take possession of commercial property of another and to receive, collect, care for, and dispose of the property or proceeds of the property; and to provide remedies related to the receiverships.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

The People of the State of Michigan enact:

554.1011 Short title.

Sec. 1. This act shall be known and may be cited as the "receivership act".

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1012 Definitions.

Sec. 2. As used in this act:

(a) "Affiliate" means all of the following:

(i) With respect to an individual, any of the following:

(A) A companion of the individual.

(B) A lineal ancestor or descendant, whether by blood or adoption, of either of the following:

(I) The individual.

(II) A companion of the individual.

(C) A companion of an ancestor or descendant described in sub-subparagraph (B).

(D) 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.

(E) Any other individual occupying the residence of the individual.

(ii) With respect to a person other than an individual, any of the following:

(A) Another person that directly or indirectly controls, is controlled by, or is under common control with the person.

(B) An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person.

(C) A companion of, or an individual occupying the residence of, an individual described in sub-subparagraph (A) or (B).

(b) "Companion" means any of the following:

(i) The spouse of an individual.

(ii) The domestic partner of an individual.

(iii) Another individual in a civil union with an individual.

(c) "Court" means the circuit court.

(d) "Court rules" means the rules adopted by the supreme court under section 5 of article VI of the state constitution of 1963, including the most recent amendments.

(e) "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.

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

(g) "Lien" means an interest in property that secures payment or performance of an obligation.

(h) "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.

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

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

(k) "Owner" means the person for whose property a receiver is appointed.

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

(m) "Proceeds" means any of the following property:

(i) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property.

(ii) Whatever is collected on, or distributed on account of, receivership property.

(iii) Rights arising out of receivership property.

(iv) 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.

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

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

(o) "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.

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

(q) "Receivership property" means the property of an owner that 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.

(r) "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.

(s) "Rents" means all of the following:

(i) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real or personal property of another person.

(ii) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property.

(iii) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person.

(iv) Sums payable to terminate an agreement to possess or occupy real or personal property of another person.

(v) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property.

(vi) Other sums payable under an agreement relating to the real or personal property of another person that constitute rents under law of this state other than this act.

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

(u) "Secured party" means a person entitled to enforce a secured obligation or lien.

(v) "Security agreement" means an agreement that creates or provides for a lien, including a mortgage.

(w) "Sign" means to do any of the following with present intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

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

(x) "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.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1013 Court order; issuance; notice and hearing; circumstances.

Sec. 3. (1) Except as otherwise provided in subsection (2), the court may issue an order under this act only after notice and opportunity for a hearing appropriate in the circumstances.

(2) The court may issue an order under this act under the following circumstances:

(a) Without prior notice if cause exists to require issuance of an order before notice is given.

(b) After notice and without a prior hearing if cause exists to require issuance of an order before a hearing is held.

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

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1014 Applicability of act; scope; limitation.

Sec. 4. (1) Except as otherwise provided in subsection (2) or (3), this act applies to a receivership for an interest in any of the following commercial property:

(a) Real property, fixtures, and any personal property related to or used in operating the real property.

(b) Personal property.

(2) This act does not apply to a receivership for an interest in real property improved by 1 to 4 dwelling units unless 1 or more of the following applies:

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

(b) The interest secures an obligation incurred at a time when the property was used or planned for use for

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agricultural, commercial, industrial, or mineral-extraction purposes.

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

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

(3) This act does not apply to a receivership authorized by 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.

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

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

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1015 Selection, appointment, removal, and compensation of receiver; establishment by court rule; jurisdiction.

Sec. 5. (1) Except as provided in this act, the procedure for the selection, appointment, removal, and compensation of a receiver, or a professional engaged under section 15, under this act is as established by the court rules.

(2) The court that appoints a receiver under this act has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1016 Appointment of receiver; circumstances; appointment without prior notice or hearing; security.

Sec. 6. (1) The court may appoint a receiver as follows:

(a) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, under either of the following circumstances:

(i) The property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment.

(ii) The property or its revenue-producing potential has been or is about to be the subject of a voidable transaction.

(b) After judgment for any of the following reasons:

(i) To carry the judgment into effect.

(ii) 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.

(c) If a receiver may be appointed on equitable grounds.

(d) 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.

(2) In connection with the foreclosure or other enforcement of a security agreement or lien, the court may appoint a receiver for the property under any of the following circumstances:

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

(b) The person that granted a lien in the property agreed in a signed record to appointment of a receiver on default.

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

(d) The property held by the secured party is not sufficient to satisfy the secured obligation.

(e) The owner fails to turn over to the secured party proceeds or rents the secured party was entitled to collect.

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

(3) The court may condition appointment of a receiver without prior notice under section 3(2)(a) or without a prior hearing under section 3(2)(b) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney 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.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1017 Appointment of receiver; objection; requirements; disqualifications.

Sec. 7. (1) If a court determines there is good cause to appoint a receiver, the court shall select the receiver

in accordance with this section. A receiver selected by the court must have sufficient competence, qualifications, and experience to administer the receivership estate.

(2) The party moving for the appointment of a receiver may request, or the parties may stipulate to, the selection of a receiver. The moving party shall describe how the nominated receiver meets the requirements of this section.

(3) If the nonmoving party does not file an objection to the moving party's nominated receiver within 14 days after the complaint or motion is served, or if the parties stipulate to the selection of the receiver, the court shall appoint the receiver nominated by the party or parties, unless the court determines that a different receiver should be appointed. All of the following apply to an objection to a receiver:

(a) The party filing an objection to a nominated receiver shall submit an alternative nominee for appointment as receiver and serve the objection on all parties, as required by the court rules, with a notice of hearing.

(b) If the court appoints a different receiver under this section, within 14 days after the appointment, any party may file an objection to the receiver and submit an alternative nominee for appointment as receiver.

(c) An objecting party shall describe how the alternative nominee meets the requirements for a receiver under this section.

(d) The court may, in its discretion, with or without motion or notice, order the period for objection to a receiver reduced. If the court exercises this discretion, the court shall identify and show good cause for the reduction.

(4) If the court appoints a different receiver under subsection (3), or if a party objects to a receiver and nominates a new receiver under this section, the court or objecting party shall state its rationale for selecting that particular receiver after considering all of the following factors:

(a) The experience of the receiver in the operation or liquidation of the type of assets to be administered.

(b) Relevant business, legal, or receivership knowledge of the receiver.

(c) The receiver's ability to obtain the required bonding if more than a nominal bond is required.

(d) Whether the receiver is disqualified under this section.

(e) Any other factors the court determines to be appropriate.

(5) Except as otherwise provided in subsection (6), a person is disqualified from appointment as receiver if 1 or more of the following apply:

(a) The person is an affiliate of a party.

(b) The person has an interest materially adverse to an interest of a party.

(c) The person has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver.

(d) The person has a debtor-creditor relationship with a party.

(e) The person holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

(6) A person is not disqualified from appointment as receiver solely because 1 or more of the following apply:

(a) The person 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.

(b) The person 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.

(c) The person maintains with a party a deposit account as defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1018 Bond; alternative security.

Sec. 8. (1) Except as otherwise provided in subsection (2), a receiver shall post with the court a bond that meets all of the following requirements:

(a) The bond is conditioned on the faithful discharge of the receiver's duties.

(b) The bond has 1 or more sureties approved by the court.

(c) The bond is in an amount the court specifies.

(d) The bond is effective as of the date of the receiver's appointment.

(2) 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.

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

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(4) A claim against a receiver's bond or alternative security must be made not later than 1 year after the date the receiver is discharged.

History: 2018, Act 16, Eff. May 7, 2018.

554.1019 Status of receiver as lien creditor.

Sec. 9. On appointment of a receiver, the receiver has the status of a lien creditor under both of the following:

(a) Article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9809, as to receivership property that is personal property or fixtures.

(b) The recording statutes of this state as to receivership property that is real property.

History: 2018, Act 16, Eff. May 7, 2018.

554.1020 Acquisition of property after appointment as receiver; security agreement.

Sec. 10. 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.

History: 2018, Act 16, Eff. May 7, 2018.

554.1021 Receivership property; duties of person upon demand of receiver; failure to turn over property; sanction.

Sec. 11. (1) Unless the court orders otherwise, a person shall do both of the following on demand by a receiver, as applicable:

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

(b) Subject to subsection (3), if the person has possession, custody, or control of receivership property, turn the property over to the receiver.

(2) 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.

(3) 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.

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

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1022 Powers and duties of receiver.

Sec. 12. (1) Except as limited by court order or applicable law, a receiver may do all of the following:

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

(b) 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.

(c) 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.

(d) Assert a right, claim, cause of action, or defense of the owner that relates to receivership property.

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

(f) 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.

(g) Engage a professional as provided in section 15.

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

(i) Exercise any power conferred by court order, this act, or law of this state other than this act.

(2) With court approval, a receiver may do any of the following:

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

(b) Make improvements to receivership property.

- (c) Use or transfer receivership property other than in the ordinary course of business as provided in section 16.
- (d) Adopt or reject an executory contract of the owner as provided in section 17.
- (e) Pay compensation to the receiver as provided in section 21, and to each professional engaged by the receiver as provided in section 15.
- (f) Recommend allowance or disallowance of a claim of a creditor as provided in section 20.
- (g) Make a distribution of receivership property as provided in section 20.
- (3) A receiver shall do all of the following:
 - (a) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property.
 - (b) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property.
 - (c) File with the appropriate real property recording office a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description.
 - (d) Disclose to the court any fact arising during the receivership that would disqualify the receiver under section 7.
 - (e) Perform any duty imposed by court order, this act, or law of this state other than this act.
- (4) The powers and duties of a receiver may be expanded, modified, or limited by court order on reasonable notice as determined by the court.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1023 Duties of owner.

Sec. 13. (1) An owner shall do all of the following:

- (a) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties.
- (b) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.
- (c) 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.
- (d) Except as may be otherwise ordered by the court for cause, within 7 days after the entry of the order appointing the receiver, deliver to the receiver a list containing the name and address of all creditors and other known interested parties of the receivership estate.
- (e) 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.
- (f) Perform any duty imposed by court order, this act, or law of this state other than this act.
- (2) 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.
- (3) If a person knowingly fails to perform a duty imposed by this section, the court may do 1 or both of the following:
 - (a) Award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs.
 - (b) Sanction the failure as contempt.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1024 Stay or injunction.

Sec. 14. (1) Except as otherwise provided in subsection (4) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding to do any of the following:

- (a) Obtain possession of, exercise control over, or enforce a judgment against receivership property.
- (b) Enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order.
- (2) Except as otherwise provided in subsection (4), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.
- (3) 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.

(4) An order under subsection (1) or (2) does not operate as a stay or injunction of any of the following:

(a) An act, action, or proceeding to foreclose or otherwise enforce a security agreement by the person seeking appointment of the receiver.

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

(c) Commencement or continuation of a criminal proceeding.

(d) 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.

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

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

(6) If a person knowingly violates a stay or injunction under this section, the court may do 1 or both of the following:

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

(b) Sanction the violation as contempt.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1025 Engagement of professional; compensation.

Sec. 15. (1) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose all of the following to the court:

(a) The identity and qualifications of the professional.

(b) The scope and nature of the proposed engagement.

(c) Any potential conflict of interest.

(d) The proposed compensation.

(2) A receiver or professional engaged under subsection (1) 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.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1026 "Good faith" defined; use or transfer of receivership property not in ordinary course of business.

Sec. 16. (1) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

(3) With court approval, and after notice and an opportunity for a hearing is given to all creditors and other known interested parties unless the court orders otherwise for cause, 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 but is subject to a senior lien.

(4) A lien on receivership property that is extinguished by a transfer under subsection (3) 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.

(5) A transfer under subsection (3) 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.

(6) A reversal or modification of an order approving a transfer under subsection (3) 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.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1027 "Timeshare interest" defined; executory contract.

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Sec. 17. (1) As used in this section, "timeshare interest" means either of the following, as applicable:

(a) Unless subdivision (b) applies, an interest having a duration of more than 3 years that 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) If the condominium act, 1978 PA 59, MCL 559.101 to 559.276, applies, a time-share estate or a time-share license, as those terms are defined in section 10 of the condominium act, 1978 PA 59, MCL 559.110.

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

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

(4) A provision in an executory contract that 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 (2) to adopt the contract.

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

(a) The time set for submitting a claim in the receivership.

(b) Thirty days after the court approves the rejection.

(6) 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.

(7) If a receiver rejects under subsection (2) 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 do either of the following:

(a) 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.

(b) 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.

(8) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if 1 or more of the following apply:

(a) The tenant occupies the leased premises as the tenant's primary residence.

(b) The receiver was appointed at the request of a person other than a mortgagee.

(c) The receiver was appointed at the request of a mortgagee and 1 or more of the following apply:

(i) The lease is superior to the lien of the mortgage.

(ii) 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.

(iii) 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.

(iv) 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.

History: 2018, Act 16, Eff. May 7, 2018.

554.1028 Defenses and immunities of receiver.

Sec. 18. (1) A receiver is entitled to all defenses and immunities provided by law of this state other than this act for an act or omission within the scope of the receiver's appointment.

(2) Leave of the appointing court must be obtained before the institution of any action or proceeding against a receiver or a professional engaged by the receiver.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1029 Quarterly interim report of receiver.

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Sec. 19. Except as otherwise ordered by the court for cause, a receiver shall file quarterly interim reports that include all of the following:

- (a) The activities of the receiver since appointment or a previous report.
- (b) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.
- (c) Receipts and dispositions of receivership property.
- (d) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.
- (e) Any other information required by the court.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1030 Notice of order governing appointment; notice to all creditors; claim; distribution of receivership property.

Sec. 20. (1) Within 7 days after the receipt by the receiver of the list required under section 13(1)(d), the receiver shall provide all creditors and any other known interested parties with notice and a copy of any order governing its appointment. Notwithstanding the foregoing, the court may delay, limit, or eliminate the notice required by this subsection on finding that cause exists for doing so.

(2) If the receiver concludes that receivership property is likely to be sufficient to provide a distribution to creditors other than those holding a perfected lien on the property, the court shall order that the receiver give notice to all creditors and any other known interested parties that they need to submit claims under this section.

(3) When notice is given under subsection (1) or (2), it must be given by both of the following:

(a) Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last known address of each creditor.

(b) Publication as directed by the court.

(4) Except as otherwise directed by the court, the notice required by subsection (1) must specify the date by which each creditor holding a claim against the owner that arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least 90 days after the later of notice under subsection (3)(a) or last publication under subsection (3)(b). The court may extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(5) A claim submitted by a creditor under this section must satisfy all of the following requirements:

(a) The claim must state the name and address of the creditor.

(b) The claim must state the amount and basis of the claim.

(c) The claim must identify any property securing the claim.

(d) The claim must be signed by the creditor under penalty of perjury.

(e) The claim must include a copy of any record on which the claim is based.

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

(7) At any time before entry of an order approving a receiver's final report, the receiver 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 law of this state other than this act.

(8) Subject to section 21, both of the following apply to a distribution of receivership property:

(a) If the distribution is to a creditor holding a perfected lien on the property, the distribution must be made in accordance with the creditor's priority under law of this state other than this act.

(b) If the distribution is to a creditor with an allowed unsecured claim, the distribution must be made as the court directs according to law of this state other than this act.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1031 Fees and expenses.

Sec. 21. (1) 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.

(2) The court may order 1 or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs and any fees and expenses of professionals engaged under section 15:

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

(b) A person whose conduct justified or would have justified the appointment of the receiver under section

6(1)(a).

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1032 Removal of receiver; replacement; discharge; termination.

Sec. 22. (1) The court may remove a receiver for cause.

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

(3) 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.

(4) 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 both of the following against the person that sought the appointment:

(a) The fees and expenses of the receivership, including reasonable attorney fees and costs.

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

History: 2018, Act 16, Eff. May 7, 2018.

554.1033 Final report of receiver; contents; discharge.

Sec. 23. (1) On completion of a receiver's duties, the receiver shall file a final report including all of the following:

(a) A description of the activities of the receiver in the conduct of the receivership.

(b) A list of receivership **property** at the commencement of the receivership and any receivership property received during the receivership.

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

(d) A list of dispositions of receivership property.

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

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

(g) Any other information required by the court.

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

History: 2018, Act 16, Eff. May 7, 2018.

554.1034 Receivership in another state; rights, powers, and duties of ancillary receiver.

Sec. 24. (1) The court may appoint a receiver appointed in another state, or that person's nominee, 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 both of the following apply:

(a) The person or nominee would be eligible to serve as receiver under section 7.

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

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

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

History: 2018, Act 16, Eff. May 7, 2018.

554.1035 Enforcement by secured party; effect.

Sec. 25. 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 do any of the following:

(a) Make the secured party a mortgagee in possession of the real property.

(b) Impose any duty on the secured party under section 9207 of the uniform commercial code, 1962 PA 174, MCL 440.9207.

(c) Make the secured party an agent of the owner.

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

(e) Make the secured obligation unenforceable.

(f) Limit any right available to the secured party with respect to the secured obligation.

(g) Constitute an action within the meaning of section 3204(1)(b) of the revised judicature act of 1961,

1961 PA 236, MCL 600.3204.

History: 2018, Act 16, Eff. May 7, 2018;—Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020.

554.1036 Uniformity of law.

Sec. 26. 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.

History: 2018, Act 16, Eff. May 7, 2018.

554.1037 Electronic signatures in global and national commerce act.

Sec. 27. This act modifies, ~~limits~~, or supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(c) or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

History: 2018, Act 16, Eff. May 7, 2018.

554.1038 Receiver appointed before effective date of act.

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

History: 2018, Act 16, Eff. May 7, 2018.

554.1040 Effective date.

Sec. 30. This act takes effect 90 days after the date it is enacted into law.

History: 2018, Act 16, Eff. May 7, 2018.

Faculty

Samuel M. Andre is a senior associate with Fredrikson & Byron P.A. in Minneapolis and represents businesses, commercial lenders and individuals in the areas of debtor/creditor law, bankruptcy and complex commercial litigation. His practice focuses on corporate restructuring, creditors' remedies, bankruptcy and commercial litigation. Prior to joining Fredrikson, Mr. Andre served as a judicial law clerk for the U.S. Bankruptcy Court in the Southern District of Texas. He is a member of the Turn-around Management Association and the Minnesota State Bar Association, and he was a member of the Houston Young Lawyers Association from 2016-18, the Houston Association of Young Bankruptcy Lawyers from 2016-18, and the Land, Water and Energy Clinic of the University of Minnesota Law School, for which he served as student director and attorney from 2014-16. Mr. Andre is and adjunct professor at the University of Minnesota Bankruptcy Clinic. He received his B.A. *summa cum laude* in 2013 from Valparaiso University and his J.D. *cum laude* in 2016 from the University of Minnesota Law School, where he served as managing editor from 2015-16 of the *Minnesota Law Review*.

Charles D. Bullock is a founding member and managing partner of Stevenson & Bullock PLC in Southfield, Mich. His practice is dedicated to debtors' and creditors' rights, real estate, bankruptcy matters, and business and commercial litigation in complex proceedings, out-of-court negotiations, and transactions involving individuals, organizations and distressed businesses. Mr. Bullock's restructuring engagements include municipalities, manufacturing, agriculture and health care, including serving in a fiduciary capacity. He is regularly appointed as a receiver and/or assignee for the benefit of creditors. Mr. Bullock is admitted to practice in the Sixth Circuit Court of Appeals, as well as the U.S. District Courts for the Eastern and Western Districts of Michigan and the Western District of Tennessee. He is a member of the state bars of Michigan and Tennessee, as well as the Federal Bar Association, ABI, Detroit Catholic Central Shamrock Bar Association, Detroit Bar Association Foundation (Patron Fellow) and Oakland County Bar Foundation (Charter Fellow). Mr. Bullock previously clerked for Hon. Bernice B. Donald of the U.S. Bankruptcy Court for the Western District of Tennessee and served on the U.S. Bankruptcy Court for the Eastern District of Michigan Rules Subcommittee. He testified before the U.S. Senate Judiciary Subcommittee on Administrative Oversight and the Courts in 2010 on whether bankruptcy reform could help preserve small business jobs, and he was on the Bankruptcy Judgeship Merit Selection Panel for an Eighth and Sixth Circuit Pilot Program in 2015. Mr. Bullock is an adjunct professor of bankruptcy law at Michigan State University College of Law and a former adjunct professor of bankruptcy law at Western Michigan University and Thomas M. Cooley Law School, Auburn Hills Campus. He has been listed in *Michigan Super Lawyers*, *DBusiness Magazine* for Michigan Top Lawyers, *Michigan Leading Lawyers* and *The Best Lawyers in America*. Mr. Bullock has served as counsel for chapter 7 panel trustees in over 3,000 bankruptcy cases in the U.S. Bankruptcy Court for the Eastern District of Michigan, and he has served as court-appointed assignee, receiver or receiver's counsel in Lenawee, Macomb, Oakland and Wayne counties in Michigan and the U.S. District Court for the Eastern District of Michigan, as well as a court-appointed mediator and facilitator in Macomb, Oakland and Wayne counties in Michigan and for the U.S. District Court for the Eastern District of Michigan. In addition, he serves as a Patient Care Ombudsman in the U.S. Bankruptcy Court for the Eastern District of Michigan and as a

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Rebecca R. DeMarb is a senior managing director with Development Specialists, Inc. in Madison, Wis. She practiced law for nearly 25 years and joined DSI in 2021 to expand her fiduciary practice. Among other roles, Ms. DeMarb has served as a state and federal court receiver since first being appointed as a chapter 128 receiver in Wisconsin more than 15 years ago. She is AV-rated by Martindale-Hubbell. In 2014, she was a winner of the eighth annual M&A Advisor Turnaround Award, and in 2016 she was a winner of the tenth annual M&A Advisor Small Transaction Award. In 2015, she received the Turnaround Management Association's Midwest and National Awards. Ms. DeMarb is a member of the Bankruptcy, Insolvency & Creditors' Rights Section of the State Bar of Wisconsin, the Western District of Wisconsin Bar Association, ABI and the Turnaround Management Association. She served on the board for the Bankruptcy, Insolvency & Creditors' Rights Section of the State Bar of Wisconsin from 2013-16, and in 2018, she founded the Wisconsin Network of the International Women's Insolvency & Restructuring Confederation, for which she has served as its co-chair and as vice director of Spring Programs on the IWIRC International Management Committee. Ms. DeMarb received her J.D. in 1997 from the University of Wisconsin.

Eric C. Peterson is Of Counsel with Spencer Fane LLP in St. Louis, Mo., where he represents companies in need of financial restructuring whether through bankruptcy, receivership or workout negotiations. He represents banks, investors, creditors and financial institutions in maximizing recoveries on unpaid debt. He is also trained as a mediator. Mr. Peterson's clients range from start-ups to Fortune 100 firms, and from community banks to large national lenders. He commonly represents creditors' committees and others in connection with large chapter 11 cases. He also acts as a court-appointed receiver for operating companies when necessary to preserve the value of ongoing operations. Mr. Peterson is a frequent speaker and writer on business restructuring, financial litigation, commercial receivership, bankruptcy and insolvency law. He authored the *Missouri Commercial Receivership Act Manual* and *Practitioner's Guidebook*, published by the Missouri Bar, and is an author of or contributor to books and articles published by the American Bar Association, ABI and others. Mr. Peterson presents several panel discussions annually, including in 2018 at the annual Missouri Judicial College. As chair of the Missouri Bar Subcommittee on Commercial Receivership, he has been credited with leading the drafting and creation of the Missouri Commercial Receivership Act (MCRA), which governs commercial receivership proceedings in Missouri. The MCRA has also been used as a model by practitioners in other states seeking to refine and reform receivership statutes outside of Missouri. Mr. Peterson received his M.B.A. from Washington University in St. Louis and his J.D. from Boston University.

Hon. Christopher P. Yates joined the Michigan Court of Appeals on April 18, 2022, after serving for 14 years as a trial judge on the Kent County Circuit Court in Grand Rapids. As an attorney, he clerked for Chief Judge James P. Churchill of the U.S. District Court for the Eastern District of Michigan and for Judge Ralph B. Guy, Jr., of the U.S. Court of Appeals for the Sixth Circuit. Judge Yates also worked as a federal prosecutor in Detroit, as an attorney-advisor in the Office of Legal Counsel at the U.S. Department of Justice in Washington, D.C., as Chief Federal Public Defender for the Western District of Michigan, and as a partner in two private law firms in Grand Rapids. Judge Yates is a past president of the Michigan Judges Association, the Grand Rapids Bar Association and the Gerald Ford

American Inns of Court chapter. He is the 2019 recipient of the Hilda Gage Judicial Excellence Award from the Michigan Judges Association, the 2020 recipient of the Judicial Excellence Award from the Michigan Defense Trial Counsel and the 2022 recipient of the Judicial Lifetime Achievement Award from the American Board of Trial Advocates, and he is a member of the Michigan Supreme Court Committee on Model Civil Jury Instructions, as well as a four-time inductee into the Kalamazoo College Athletic Hall of Fame as a tennis player. Judge Yates received his B.A. from Kalamazoo College in 1983 and his M.B.A. and J.D. from the University of Illinois in 1987.