

1 AN ACT concerning receivership.

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

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

6 Section 2. Definitions. In this Act:

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

11 (2) "Affiliate" means:

12 (A) with respect to an individual:

13 (i) a companion of the individual;

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

16 (I) the individual; or

17 (II) a companion of the individual;

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

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

1 any of them; or

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

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

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

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

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

14 (3) "Claim" means:

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

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

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

25 (5) "Companion" means:

26 (A) the spouse of an individual;

(B) the domestic partner of an individual;

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Proceeds" means the following property:

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

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

(C) rights arising out of receivership property;

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

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

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

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

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

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

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

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

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

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

1 secured obligation. The term includes a mortgagee.

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

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

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

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

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

13 Section 3. Notice and opportunity for hearing.

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

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

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

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

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

25 (c) In connection with any sale of receivership property

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

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

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

8 (3) such other persons as the court directs.

9 Section 4. Scope; exclusions.

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

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

15 (2) in personal property and fixtures; or

16 (3) a person that is not an individual.

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

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

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

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

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

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

17 (a) to direct and control the receiver;

18 (b) over all receivership property wherever located;

19 (c) to determine all controversies related to the
20 receivership or the collection, preservation, improvement,
21 disposition, and distribution of receivership property;
22 and

23 (d) over all matters otherwise arising in or relating
24 to the receivership, the receivership property, the
25 exercise of the receiver's powers, or the performance of

1 the receiver's duties.

2 Section 6. Appointment of receiver.

3 (a) The court may appoint a receiver:

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

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

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

12 (2) after judgment:

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

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

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

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

23 (B) the person has been dissolved;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) is an affiliate of a party or the judge presiding
23 over the receivership:

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

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

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

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

(6) is a sheriff of any county; or

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

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

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

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

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

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

Section 8. Receiver's bond; alternative security.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Collection and turnover of receivership property.

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

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

1 recoupment; and

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

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

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

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

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

24 Section 12. Powers and duties of receiver.

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

1 other than this Act, a receiver may:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this Act;

2 (2) make improvements to receivership property;

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

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

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

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

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

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

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

23 (c) A receiver shall:

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

1 disbursement, and disposition of receivership property;

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

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

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

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

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

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

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

1 Section 13. Duties of owner.

2 (a) An owner shall:

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

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

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

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

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

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

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

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

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

(C) The estimated value of the property.

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

(A) their mailing addresses;

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

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

(D) whether the claims are disputed.

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

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

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

(2) sanction the failure as civil contempt; and

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

1 Section 14. Stay; injunction.

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

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

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

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

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

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

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

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

5 (2) commencement or continuation of a criminal
6 proceeding;

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

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

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

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

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

26 (1) award actual damages caused by the violation,

1 reasonable attorney's fees, and costs; and

2 (2) sanction the violation as civil contempt.

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

8 Section 15. Engagement and compensation of professionals.

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

19 (1) the identity and qualifications of the
20 professional;

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

22 (3) any potential conflict of interest; and

23 (4) the proposed compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 17. Executory contracts.

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

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

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

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

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

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

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

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

5 (2) 30 days after the court approves the rejection.

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

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

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

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

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

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

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

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

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

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

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

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

Section 18. Defenses and immunities of receiver.

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

1 scope of the receiver's appointment.

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

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

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

14 (1) the dates covered by the interim report;

15 (2) the activities of the receiver since appointment
16 or a previous report;

17 (3) receipts and disbursements, including a payment
18 made or proposed to be made to a professional engaged by
19 the receiver;

20 (4) receipts and dispositions of receivership
21 property;

22 (5) fees and expenses of the receiver and, if not
23 filed separately, a request for approval of payment of the
24 fees and expenses; and

25 (6) any other information required by the court.

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

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

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

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

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

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

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

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

23 (3) identify any property securing the claim;

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

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

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

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

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

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

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

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

1 court.

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

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

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

11 (i) Subject to Section 21:

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

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

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

22 Section 21. Fees and expenses.

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

1 powers of the receiver.

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

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

8 (2) a person whose conduct justified or would have
9 justified the appointment of the receiver under Section
10 6(a)(1) or 6(a)(3)(D).

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

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

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

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

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

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

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

8 Section 23. Final report of receiver; discharge.

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

13 (b) The final report shall include:

14 (1) a description of the activities of the receiver in
15 the conduct of the receivership;

16 (2) a list of receivership property at the
17 commencement of the receivership and any receivership
18 property received during the receivership;

19 (3) a list of disbursements, including payments to
20 professionals engaged by the receiver;

21 (4) a list of dispositions of receivership property;

22 (5) a list of distributions made or proposed to be
23 made from the receivership for creditor claims;

24 (6) if not filed separately, a request for approval of
25 the payment of fees and expenses of the receiver and the

1 receiver's professionals; and

2 (7) any other information required by the court.

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

10 Section 24. Receivership in another state; ancillary
11 proceeding.

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

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

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

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

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

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

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

10 (1) make the secured party a mortgagee in possession
11 of real property;

14 (3) make the secured party an agent of the owner;

15 (4) constitute an election of remedies that precludes
16 a later action to enforce the secured obligation;

17 (5) make the secured obligation unenforceable; or

18 (6) limit any right available to the secured party
19 with respect to the secured obligation.

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

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

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

12 Section 29. Inapplicability. The provisions of Section
13 2-415 of the Code of Civil Procedure do not apply to a
14 receivership under this Act.