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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2020	.	
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The Committee on Commerce and Tourism (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 237 - 636

and insert:

(4) This chapter does not displace any existing rule of procedural or judicial administration of this state governing service or notice, including, without limitation, Rule 1.070, Florida Rules of Civil Procedure, and Rule 2.525, Florida Rules of Judicial Administration, which shall remain in full force and effect.



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11 714.04 Scope; exclusions.-
12 (1) This chapter applies to a receivership initiated in a
13 court of this state for an interest in real property and any
14 incidental personal property related to or used in operating the
15 real property.
16 (2) This chapter does not apply to:
17 (a) Actions in which a state agency or officer is expressly
18 authorized by statute to seek or obtain the appointment of a
19 receiver;
20 (b) Actions authorized by or commenced under federal law;
21 (c) Real property improved by one or two dwelling units
22 which includes the homestead of an individual owner or an
23 affiliate of an individual owner;
24 (d) Property of an individual exempt from forced sale,
25 execution, or seizure under the laws of this state; or
26 (e) Personal property of an individual which is used
27 primarily for personal, family, or household purposes.
28 (3) This chapter does not limit the authority of a court to
29 appoint a receiver under the laws of this state other than this
30 chapter.
31 (4) This chapter does not limit an individual's homestead
32 rights under the laws of this state or federal law.
33 (5) Unless displaced by a particular provision of this
34 chapter, the principles of law and equity, including the law
35 relative to capacity to contract, principal and agent, estoppel,
36 laches, fraud, misrepresentation, duress, coercion, mistake,
37 bankruptcy, or other validating or invalidating cause,
38 supplement this chapter.
39 714.05 Power of the court.-The court that appoints a



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40 receiver under this chapter has exclusive jurisdiction to direct
41 the receiver and determine any controversy related to the
42 receivership or receivership property.

43 714.06 Appointment of receiver.-

44 (1) The court may appoint a receiver:

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

49 1. Is being subjected to or is in danger of waste, loss,
50 substantial diminution in value, dissipation, or impairment; or

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

53 (b) After judgment:

54 1. To carry the judgment into effect; or

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

58 (c) In an action in which a receiver for real property may
59 be appointed on equitable grounds, subject to the requirements
60 of paragraphs (a) and (b); or

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

64 (2) In connection with the foreclosure or other enforcement
65 of a mortgage, the court shall consider the following facts and
66 circumstances, together with any other relevant facts, in
67 deciding whether to appoint a receiver for the mortgaged
68 property:



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69 (a) Appointment is necessary to protect the property from
70 waste, loss, substantial diminution in value, transfer,
71 dissipation, or impairment;

72 (b) The mortgagor agreed in a signed record to the
73 appointment of a receiver on default;

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

76 (d) The property and any other collateral held by the
77 mortgagee are not sufficient to satisfy the secured obligation;

78 (e) The owner fails to turn over to the mortgagee proceeds
79 or rents the mortgagee was entitled to collect; or

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

82 (3) The court may condition the appointment of a receiver
83 without prior notice or hearing under s. 714.03 on the giving of
84 security by the person seeking the appointment for the payment
85 of damages, reasonable attorney fees, and costs incurred or
86 suffered by any person if the court later concludes that the
87 appointment was not justified. If the court later concludes that
88 the appointment was justified and the order of appointment of
89 the receiver becomes final and no longer subject to appeal, the
90 court shall release the bond or other security. When any order
91 appointing a receiver or providing for injunctive relief is
92 issued on the pleading of a municipality or the state, or any
93 officer, agency, or political subdivision thereof, the court may
94 require or dispense with a bond, with or without surety, and
95 conditioned in the same manner, having due regard for public
96 interest.

97 (4) A party adversely affected by an order appointing a



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98 receiver may move to dissolve or modify the order at any time.
99 If a party moves to dissolve or modify the order, the motion
100 must be heard within 5 days after the movant applies for a
101 hearing on the motion or at such time as the court determines is
102 reasonable and appropriate under the circumstances after the
103 movant applies for a hearing on the motion. After notice and a
104 hearing, the court may grant relief for cause shown.

105 714.07 Disqualification from appointment as receiver;
106 disclosure of interest.—

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

110 (2) Except as otherwise provided in subsection (3), a
111 person is disqualified from appointment as receiver if the
112 person:

113 (a) Is an affiliate of a party;

114 (b) Has an interest materially adverse to an interest of a
115 party;

116 (c) Has a material financial interest in the outcome of the
117 action, other than compensation the court may allow the
118 receiver;

119 (d) Has a debtor-creditor relationship with a party; or

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

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

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



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

130 (c) Maintains with a party a deposit account, as defined in
131 s. 679.1021.

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

135 714.08 Receiver's bond; alternative security.—

136 (1) Except as otherwise provided in subsection (2), a
137 receiver shall post with the court a bond that:

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

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

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

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

144 (2) The court may approve the receiver posting an
145 alternative security with the court, such as a letter of credit
146 or deposit of funds. The receiver may not use receivership
147 property as alternative security. Interest that accrues on
148 deposited funds must be paid to the receiver upon the receiver's
149 discharge.

150 (3) The court may authorize a receiver to act before the
151 receiver posts the bond or alternative security required by this
152 section if the action is necessary to prevent or mitigate
153 immediate injury, loss, or damage to the party who sought the
154 appointment of the receiver, or immediate waste, dissipation,
155 impairment, or substantial diminution in value to the



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156 receivership property.

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

160 714.09 Status of receiver as lien creditor.—Upon
161 appointment of a receiver, the receiver has the status of a lien
162 creditor under:

163 (1) Chapter 679 as to receivership property or fixtures;
164 and

165 (2) Chapter 695 as to receivership property that is real
166 property.

167 714.10 Security agreement covering after-acquired
168 property.—Except as otherwise provided by law other than this
169 chapter, property that a receiver or an owner acquires after
170 appointment of the receiver is subject to a security agreement
171 entered into before the appointment to the same extent as if the
172 court had not appointed the receiver.

173 714.11 Collection and turnover of receivership property.—

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

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

180 (b) Subject to subsection (3), a person that has
181 possession, custody, or control of receivership property shall
182 turn the property over to the receiver.

183 (2) A person that has notice of the appointment of a
184 receiver and owes a debt that is receivership property may not



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185 satisfy the debt by payment to the owner.

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

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

196 714.12 Powers and duties of receiver.-

197 (1) Except as limited by court order or the laws of this
198 state other than this chapter, a receiver may:

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

201 (b) Operate a business constituting receivership property,
202 including preservation, use, sale, lease, license, exchange,
203 collection, or disposition of the property in the ordinary
204 course of business;

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

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

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



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

219 (g) Engage a professional pursuant to s. 714.15;

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

223 (i) Exercise any power conferred by court order, this
224 chapter, or the laws of this state other than this chapter.

225 (2) With court approval, a receiver may:

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

228 (b) Make improvements to receivership property;

229 (c) Use or transfer receivership property other than in the
230 ordinary course of business pursuant to s. 714.16;

231 (d) Adopt or reject an executory contract of the owner
232 pursuant to s. 714.17;

233 (e) Pay compensation to the receiver pursuant to s. 714.21,
234 and to each professional engaged by the receiver under s.
235 714.15;

236 (f) Recommend allowance or disallowance of a claim of a
237 creditor pursuant to s. 714.20; and

238 (g) Make a distribution of receivership property pursuant
239 to s. 714.20.

240 (3) A receiver shall:

241 (a) Prepare and retain appropriate business records,
242 including a record of each receipt, disbursement, and



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243 disposition of receivership property;

244 (b) Account for receivership property, including the
245 proceeds of a sale, lease, license, exchange, collection, or
246 other disposition of the property;

247 (c) File with the recording office of the county in which
248 the real property is located a copy of the order appointing the
249 receiver and, if a legal description of the real property is not
250 included in the order, the legal description;

251 (d) Disclose to the court any fact arising during the
252 receivership which would disqualify the receiver under s.
253 714.07; and

254 (e) Perform any duty imposed by court order, this chapter,
255 or the laws of this state other than this chapter.

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

258 714.13 Duties of owner.—

259 (1) An owner shall:

260 (a) Assist and cooperate with the receiver in the
261 administration of the receivership and the discharge of the
262 receiver's duties;

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

265 (c) Identify all records and other information relating to
266 the receivership property, including a password, authorization,
267 or other information needed to obtain or maintain access to or
268 control of the receivership property, and make available to the
269 receiver the records and information in the owner's possession,
270 custody, or control;

271 (d) Upon subpoena, submit to examination under oath by the



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272 receiver concerning the acts, conduct, property, liabilities,
273 and financial condition of the owner or any matter relating to
274 the receivership property or the receivership; and

275 (e) Perform any duty imposed by court order, this chapter,
276 or the laws of this state other than this chapter.

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

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

283 (a) Award the receiver actual damages caused by the
284 person's failure, reasonable attorney fees, and costs; and

285 (b) Sanction the failure as civil contempt.

286 714.14 Stay; injunction.—

287 (1) Except as otherwise provided in subsection (5), after
288 notice and opportunity for a hearing, the court may enter an
289 order providing for a stay, applicable to all persons, of any
290 act, action, or proceeding:

291 (a) To obtain possession of, exercise control over, or
292 enforce a judgment against all or a portion of the receivership
293 property as defined in the order creating the stay; and

294 (b) To enforce a lien against all or a portion of the
295 receivership property to the extent the lien secures a claim
296 against the owner which arose before entry of the order.

297
298 The court shall include in its order a specific description of
299 the receivership property subject to the stay, and shall include
300 the following language in the title of the order: "Order Staying



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301 Certain Actions to Enforce Claims against Receivership
302 Property.”

303 (2) Except as otherwise provided in subsection (5), the
304 court may enjoin an act, action, or proceeding against or
305 relating to receivership property if the injunction is necessary
306 to protect against misappropriation of, or waste relating
307 directly to, the receivership property.

308 (3) If the court grants injunctive relief, the injunction
309 must specify the reasons for entry and must describe in
310 reasonable detail the act or acts restrained without reference
311 to a pleading or other document. The injunction is binding on
312 the parties to the action; on the parties' officers, agents,
313 servants, employees, and attorneys; and on any person who
314 receives actual notice of the injunction and is in active
315 concert or participation with the parties.

316 (4) A person whose act, action, or proceeding is stayed or
317 enjoined under this section, or who is otherwise adversely
318 affected by such stay or injunction, may apply to the court for
319 relief from the stay or injunction. If a person moves for such
320 relief, the motion must be heard within 5 days after the movant
321 applies for a hearing on the motion or at such time as the court
322 determines is reasonable and appropriate under the circumstances
323 after the movant applies for a hearing on the motion. After
324 notice and a hearing, the court may grant relief for cause
325 shown.

326 (5) An order under subsection (1) or subsection (2) does
327 not operate as a stay or injunction of:

328 (a) Any act, action, or proceeding to foreclose or
329 otherwise enforce a mortgage by the person seeking appointment



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330 of the receiver;

331 (b) Any act, action, or proceeding to perfect, or maintain
332 or continue the perfection of, an interest in receivership
333 property;

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

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

339 (e) Establishment by a governmental unit of a tax liability
340 against the receivership property or the owner of such
341 receivership property, or an appeal of any such liability.

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

344 (7) The scope of the receivership property subject to the
345 stay under subsection (1) may be modified upon request of the
346 receiver or other person, after notice and an opportunity for a
347 hearing.

348 (8) In connection with the entry of an order under
349 subsection (1) or subsection (2), the court shall determine
350 whether an additional bond or alternative security will be
351 required as a condition to entry of the stay or injunction and,
352 if required, direct the party requesting the stay or injunction
353 to post a bond or alternative security as a condition for the
354 stay or injunction to become effective.

355 714.15 Engagement and compensation of professional.—

356 (1) With court approval, a receiver may engage an attorney,
357 an accountant, an appraiser, an auctioneer, a broker, or another
358 professional to assist the receiver in performing a duty or



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359 exercising a power of the receiver. The receiver shall disclose
360 to the court:

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

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

363 (c) Any potential conflict of interest; and

364 (d) The proposed compensation.

365 (2) A person is not disqualified from engagement under this
366 section solely because of the person's engagement by,
367 representation of, or other relationship with the receiver, a
368 creditor, or a party. This chapter does not prevent the receiver
369 from serving in the receivership as an attorney, an accountant,
370 an auctioneer, or a broker when authorized by law.

371 (3) A receiver or professional engaged under subsection (1)
372 shall file with the court an itemized statement of the time
373 spent, work performed, and billing rate of each person that
374 performed the work and an itemized list of expenses. The
375 receiver shall pay the amount approved by the court.

376 714.16 Use or transfer of receivership property not in
377 ordinary course of business.-

378 (1) For the purposes of this section, the term "good faith"
379 means honesty in fact and the observance of reasonable
380 commercial standards of fair dealing.

381 (2) Before judgment is entered with respect to the
382 receivership property in the action in which the receiver is
383 appointed, with court approval after notice to all parties with
384 an interest in the property, including all lienholders, and a
385 hearing, a receiver may use or transfer by sale, lease, license,
386 exchange, or other disposition receivership property other than
387 in the ordinary course of business only if the owner of the



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388 property:

389 (a) After the commencement of the action in which the
390 receiver is appointed, expressly consents in writing to the
391 receiver's proposed use or transfer of the receivership
392 property, and the receiver notes the property owner's express
393 consent in the motion to approve the proposed use or transfer;
394 or

395 (b) Before or at the hearing on the receiver's motion to
396 approve the use or transfer of the receivership property, fails
397 to object thereto after the receiver in good faith has provided
398 reasonable advance written notice to the property owner of the
399 proposed use or transfer, and the receiver demonstrates in the
400 motion that the proposed use or transfer is necessary to prevent
401 waste, loss, substantial diminution in value, dissipation, or
402 impairment of the property or its revenue-producing potential or
403 to prevent a voidable transaction involving the property.

404
405 Service of notice to lienholders who are not parties to the
406 action must be made as provided in chapter 48 for service of
407 original process or, in the case of a financial institution
408 lienholder, as provided in s. 655.0201. If service cannot be
409 effectuated in such manner, upon authorization by court order,
410 the receiver may effect service of notice on the nonparty
411 lienholder pursuant to chapter 49 or as otherwise ordered by the
412 court.

413 (3) After judgment is entered against the property owner
414 and with court approval in the action in which the receiver is
415 appointed, a receiver may use or transfer

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417 ===== T I T L E A M E N D M E N T =====

418 And the title is amended as follows:

419 Delete lines 8 - 47

420 and insert:

421 for certain court orders; providing construction and
422 applicability; specifying that a court has exclusive
423 jurisdiction to direct receivers and determine
424 controversies under certain circumstances; providing
425 requirements and authorizations relating to the
426 appointment of a receiver; authorizing certain parties
427 to move to dissolve or modify certain orders;
428 requiring that such motions be heard within a
429 specified timeframe; specifying when a person is or is
430 not disqualified from appointment as a receiver;
431 authorizing certain persons to nominate someone to
432 serve as a receiver; specifying that the court is not
433 bound by such nomination; requiring a receiver to post
434 a bond with the court which meets certain
435 requirements; providing an exception; prohibiting a
436 claim against a receiver's bond or alternative
437 security from being made after a certain time;
438 providing that an appointed receiver has certain
439 statuses of a lien creditor; providing that certain
440 property is subject to specified security agreements;
441 providing requirements relating to the collection and
442 turnover of receivership property; providing for
443 powers and duties of a receiver; authorizing the court
444 to expand, modify, or limit such powers and duties;
445 providing for duties of an owner; authorizing a court



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446 to take certain actions if a person knowingly fails to
447 perform a duty; authorizing a court to take certain
448 actions relating to stays and injunctions; authorizing
449 certain persons to apply for relief from a stay or
450 injunction; requiring that certain motions be heard
451 within a specified timeframe; specifying when an order
452 does not operate as a stay or injunction; authorizing
453 receivers to engage and compensate certain
454 professionals under certain circumstances; requiring
455 certain persons to file an itemized statement with the
456 court; requiring a receiver to pay an amount approved
457 by the court; defining the term "good faith";
458 authorizing a receiver to use or transfer receivership
459 property other than in the ordinary course of business
460 under certain circumstances; providing for the service
461 of notice to lienholders who are not parties to the
462 action;