

By Senator Berman

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1                                   A bill to be entitled  
2           An act relating to the Uniform Commercial Real Estate  
3           Receivership Act; creating chapter 714, F.S., relating  
4           to the Uniform Commercial Real Estate Receivership  
5           Act; providing a short title; defining terms;  
6           prohibiting a court from issuing certain orders unless  
7           certain requirements are met; providing requirements  
8           for certain court orders; authorizing certain parties  
9           to move to dissolve or modify certain orders;  
10          requiring that such motions be heard within a  
11          specified timeframe; providing construction and  
12          applicability; specifying that a court has exclusive  
13          jurisdiction to direct receivers and determine  
14          controversies under certain circumstances; providing  
15          requirements and authorizations relating to the  
16          appointment of a receiver; specifying when a person is  
17          or is not disqualified from appointment as a receiver;  
18          authorizing certain persons to nominate someone to  
19          serve as a receiver; specifying the court is not bound  
20          by such nomination; requiring a receiver to post a  
21          bond with the court which meets certain requirements;  
22          providing an exception; prohibiting a claim against a  
23          receiver's bond or alternative security from being  
24          made after a certain time; providing that an appointed  
25          receiver has certain statuses of a lien creditor;  
26          providing that certain property is subject to  
27          specified security agreements; providing requirements  
28          relating to the collection and turnover of  
29          receivership property; providing for powers and duties

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30 of a receiver; authorizing the court to expand,  
31 modify, or limit such powers and duties; providing for  
32 duties of an owner; authorizing a court to take  
33 certain actions if a person knowingly fails to perform  
34 a duty; authorizing a court to take certain actions  
35 relating to stays and injunctions; authorizing certain  
36 persons to apply for relief from a stay or injunction;  
37 specifying when an order does not operate as a stay or  
38 injunction; authorizing receivers to engage and  
39 compensate certain professionals under certain  
40 circumstances; requiring certain persons to file an  
41 itemized statement with the court; requiring a  
42 receiver to pay an amount approved by the court;  
43 defining the term "good faith"; authorizing a receiver  
44 to use or transfer receivership property other than in  
45 the ordinary course of business under certain  
46 circumstances; providing for the service of notice to  
47 lien holders who are not parties to the action;  
48 defining the term "timeshare interest"; authorizing a  
49 receiver to adopt or reject an executory contract of  
50 the owner relating to receivership property under  
51 certain circumstances; requiring that a claim of  
52 damages for rejection of a contract be submitted  
53 within a specified timeframe; authorizing a purchaser  
54 to take certain actions if a receiver rejects an  
55 executory contract under certain circumstances;  
56 prohibiting a receiver from rejecting unexpired leases  
57 of certain property under certain circumstances;  
58 providing for defenses and immunities of a receiver;

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59 providing requirements for interim reports filed by a  
60 receiver; providing requirements relating to notices  
61 of appointment; authorizing the court to enter certain  
62 orders if the court concludes that receivership  
63 property is likely to be insufficient to satisfy  
64 certain claims; providing requirements for certain  
65 distributions of receivership property; authorizing a  
66 court to award fees and expenses; authorizing a court  
67 to order certain persons to pay fees and expenses;  
68 providing for the removal and replacement of a  
69 receiver and the termination of a court's  
70 administration of the receivership property under  
71 certain circumstances; requiring a receiver to file a  
72 final report containing certain information upon  
73 completion of the receiver's duties; specifying that a  
74 receiver is discharged if certain requirements are  
75 met; authorizing a court to appoint ancillary  
76 receivers under certain circumstances; providing for  
77 rights, powers, and duties of an ancillary receiver;  
78 specifying that certain requests, appointments, and  
79 applications by a mortgagee do not have certain  
80 effects; providing construction and applicability;  
81 providing an effective date.

82  
83 Be It Enacted by the Legislature of the State of Florida:

84  
85 Section 1. Chapter 714, Florida Statutes, consisting of  
86 sections 714.01-714.28, is created to read:

87 CHAPTER 714

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UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

88 714.01 Short title.—This chapter may be cited as the  
89 Uniform Commercial Real Estate Receivership Act.

90 714.02 Definitions.—For the purposes of this chapter, the  
91 term:

92 (1) "Affiliate" means:

93 (a) With respect to an individual:

94 1. A companion of the individual;

95 2. A lineal ancestor or descendent, whether by blood or  
96 adoption, of:

97 a. The individual; or

98 b. A companion of the individual;

99 3. A companion of an ancestor or descendent as described in  
100 subparagraph 2.;

101 4. A sibling, aunt, uncle, great aunt, great uncle, first  
102 cousin, niece, nephew, grandniece, or grandnephew of the  
103 individual, whether related by the whole or the half blood or  
104 adoption, or a companion of any of them; or

105 5. Any other person occupying the residence of the  
106 individual; and

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

108 1. Another person who directly or indirectly controls, is  
109 controlled by, or is under common control with the person;

110 2. An officer, director, manager, member, partner,  
111 employee, or trustee or other fiduciary of the person; or

112 3. A companion of an individual or an individual occupying  
113 the residence of an individual.

114 (2) "Companion" means:

115 (a) The spouse of an individual;

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- 117       (b) The registered domestic partner of an individual; or  
118       (c) Another individual in a civil union with an individual.  
119       (3) "Court" means the court of general equity jurisdiction  
120 in this state.  
121       (4) "Executory contract" means a contract, including a  
122 lease, under which each party has an unperformed obligation and  
123 the failure of a party to complete performance would constitute  
124 a material breach.  
125       (5) "Governmental unit" means an office, department,  
126 division, bureau, board, commission, or other agency of this  
127 state or a subdivision of this state.  
128       (6) "Lien" means an interest in property which secures  
129 payment or performance of an obligation.  
130       (7) "Mortgage" means a record, however denominated, that  
131 creates or provides for a consensual lien on real property or  
132 rents, even if the record also creates or provides for a lien on  
133 personal property.  
134       (8) "Mortgagee" means a person entitled to enforce an  
135 obligation secured by a mortgage.  
136       (9) "Mortgagor" means a person who grants a mortgage or a  
137 successor in ownership of the real property described in the  
138 mortgage.  
139       (10) "Owner" means the person for whose property a receiver  
140 is appointed.  
141       (11) "Person" means an individual, estate, business or  
142 nonprofit entity, public corporation, government or governmental  
143 subdivision, agency, or instrumentality or other legal entity.  
144       (12) "Proceeds" means any of the following property:  
145       (a) Whatever is acquired on the sale, lease, license,

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146 exchange, or other disposition of receivership property.

147 (b) Whatever is collected on, or distributed on account of,  
148 receivership property.

149 (c) Rights arising out of receivership property.

150 (d) To the extent of the value of receivership property,  
151 claims arising out of the loss, nonconformity, or interference  
152 with the use of, defects or infringement of rights in, or damage  
153 to the property.

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

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

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

168 (15) "Receivership" means a proceeding in which a receiver  
169 is appointed.

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

174 (17) "Record," if used as a noun, means information that is

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175 inscribed on a tangible medium or that is stored on an  
176 electronic or other medium and is retrievable in perceivable  
177 form.

178 (18) "Rents" means:

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

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

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

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

189 (e) Sums payable to a mortgagor for payment or  
190 reimbursement of expenses incurred in owning, operating, and  
191 maintaining real property or constructing or installing  
192 improvements on real property; or

193 (f) Other sums payable under an agreement relating to the  
194 real property of another person which constitute rents under the  
195 laws of this state other than this act.

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

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

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

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

203 (b) To attach to or logically associate with the record an

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204 electronic sound, symbol, or process.

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

209 714.03 Notice and opportunity for hearing.—

210 (1) Except as otherwise provided in subsection (2), the  
211 court may issue an order under this chapter only after notice  
212 and opportunity for a hearing appropriate under the  
213 circumstances.

214 (2) The court may issue an order under this chapter without  
215 written or oral notice to the adverse party only if:

216 (a) It appears from the specific facts shown by affidavit  
217 or verified pleading or motion that immediate and irreparable  
218 injury, loss, or damage will result to the movant or that waste,  
219 dissipation, impairment, or substantial diminution in value will  
220 result to the subject real estate before any adverse party can  
221 be heard in opposition; and

222 (b) The movant's attorney certifies in writing all efforts  
223 that have been made to give notice to all known adverse parties,  
224 or the reasons why such notice should not be required.

225 (3) Only an affidavit, a declaration or a verified  
226 pleading, or a motion may be used to support the application for  
227 the appointment of a receiver, unless the adverse party appears  
228 at the hearing or has received reasonable prior notice of the  
229 hearing. Every order appointing a receiver without notice must  
230 be endorsed with the date and hour of entry, must be filed  
231 forthwith in the clerk's office, must define the injury, must  
232 state findings by the court as to why the injury may be



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233 irreparable, and must give the reasons why the order was granted  
234 without notice if notice was not given. The order appointing a  
235 receiver shall remain in effect until the further order of the  
236 court.

237 (4) An order appointing a receiver or providing for  
238 injunctive relief may not be entered unless a bond is given by  
239 the movant in an amount the court deems proper, conditioned for  
240 the payment of costs and damages sustained by the adverse party  
241 if the order is improperly entered. When any order appointing a  
242 receiver or providing for injunctive relief is issued on the  
243 pleading of a municipality or the state, or any officer, agency,  
244 or political subdivision thereof, the court may require or  
245 dispense with a bond, with or without surety, and conditioned in  
246 the same manner, having due regard for the public interest.

247 (5) If the court grants injunctive relief, the injunction  
248 must specify the reasons for entry, must describe in reasonable  
249 detail the act or acts restrained without reference to a  
250 pleading or another document, and must be binding on the parties  
251 to the action; on the parties' officers, agents, servants,  
252 employees, and attorneys; and on any person in active concert or  
253 participation with the parties who receives actual notice of the  
254 injunction.

255 (6) A party adversely affected by an order appointing  
256 receiver or for injunctive relief may move to dissolve or modify  
257 the order at any time. If a party moves to dissolve or modify,  
258 the motion shall be heard within 5 days after the movant applies  
259 for a hearing on the motion.

260 (7) This chapter does not displace any existing rule of  
261 procedural or judicial administration of this state governing

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262 service or notice, including, without limitation, Rule 1.070,  
263 Florida Rules of Civil Procedure and Rule 2.525, Florida Rules  
264 of Judicial Administration, which shall remain in full force and  
265 effect.

266 714.04 Scope; exclusions.-

267 (1) This chapter applies to a receivership initiated in a  
268 court of this state for an interest in real property and any  
269 personal property related to or used in operating the real  
270 property.

271 (2) This chapter does not apply to:

272 (a) Actions in which a state agency or officer is expressly  
273 authorized by statute to seek or obtain the appointment of a  
274 receiver;

275 (b) Actions authorized by or commenced under federal law;

276 (c) Residential real property of an individual owner which  
277 is occupied by the owner, the spouse of the owner, or a child or  
278 other dependent of the owner;

279 (d) Property of an individual exempt from forced sale,  
280 execution, or seizure under the laws of this state; or

281 (e) Personal property of an individual which is used  
282 primarily for personal, family, or household purposes.

283 (3) This chapter does not limit the authority of a court to  
284 appoint a receiver under the laws of this state other than this  
285 chapter.

286 (4) This chapter does not limit an individual's homestead  
287 and exemption rights under the laws of this state or federal  
288 law.

289 (5) Unless displaced by a particular provision of this  
290 chapter, the principles of law and equity, including the law

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291 relative to capacity to contract, principal and agent, estoppel,  
292 laches, fraud, misrepresentation, duress, coercion, mistake,  
293 bankruptcy, or other validating or invalidating cause,  
294 supplement this chapter.

295 714.05 Power of the court.—The court that appoints a  
296 receiver under this chapter has exclusive jurisdiction to direct  
297 the receiver and determine any controversy related to the  
298 receivership or receivership property.

299 714.06 Appointment of receiver.—

300 (1) The court may appoint a receiver:

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

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

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

309 (b) After judgment:

310 1. To carry the judgment into effect; or

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

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

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

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320       (2) In connection with the foreclosure or other enforcement  
321 of a mortgage, the court shall consider the following facts and  
322 circumstances, together with any other relevant facts, in  
323 deciding whether to appoint a receiver for the mortgaged  
324 property:

325       (a) Appointment is necessary to protect the property from  
326 waste, loss, substantial diminution in value, transfer,  
327 dissipation, or impairment;

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

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

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

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

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

338       (3) The court may condition the appointment of a receiver  
339 without prior notice or hearing under s. 714.03 on the giving of  
340 security by the person seeking the appointment for the payment  
341 of damages, reasonable attorney fees, and costs incurred or  
342 suffered by any person if the court later concludes that the  
343 appointment was not justified. If the court later concludes that  
344 the appointment was justified and the order of appointment of  
345 the receiver becomes final and no longer subject to appeal, the  
346 court shall release the security.

347       714.07 Disqualification from appointment as receiver;  
348 disclosure of interest.-

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

352       (2) Except as otherwise provided in subsection (3), a  
353 person is disqualified from appointment as receiver if the  
354 person:

355           (a) Is an affiliate of a party;

356           (b) Has an interest materially adverse to an interest of a  
357 party;

358           (c) Has a material financial interest in the outcome of the  
359 action, other than compensation the court may allow the  
360 receiver;

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

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

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

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

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

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

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

377       714.08 Receiver's bond; alternative security.-

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

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

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

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

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

386 (2) The court may approve the receiver posting an  
387 alternative security with the court, such as a letter of credit  
388 or deposit of funds. The receiver may not use receivership  
389 property as alternative security. Interest that accrues on  
390 deposited funds must be paid to the receiver upon the receiver's  
391 discharge.

392 (3) The court may authorize a receiver to act before the  
393 receiver posts the bond or alternative security required by this  
394 section if the action is necessary to prevent or mitigate  
395 immediate injury, loss, or damage to the party who sought the  
396 appointment of the receiver, or immediate waste, dissipation,  
397 impairment, or substantial diminution in value to the  
398 receivership property.

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

402 714.09 Status of receiver as lien creditor.—Upon  
403 appointment of a receiver, the receiver has the status of a lien  
404 creditor under:

405 (1) Chapter 679 as to receivership property or fixtures;  
406 and

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407 (2) Chapter 695 as to receivership property that is real  
408 property.

409 714.10 Security agreement covering after-acquired  
410 property.—Except as otherwise provided by law other than this  
411 chapter, property that a receiver or an owner acquires after  
412 appointment of the receiver is subject to a security agreement  
413 entered into before the appointment to the same extent as if the  
414 court had not appointed the receiver.

415 714.11 Collection and turnover of receivership property.—

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

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

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

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

428 (3) If a creditor has possession, custody, or control of  
429 receivership property and the validity, perfection, or priority  
430 of the creditor's lien on the property depends on the creditor's  
431 possession, custody, or control, the creditor may retain  
432 possession, custody, or control until the court orders adequate  
433 protection of the creditor's lien.

434 (4) Unless a bona fide dispute exists about a receiver's  
435 right to possession, custody, or control of receivership

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436 property, the court may sanction as civil contempt a person's  
437 failure to turn the property over when required by this section.

438 714.12 Powers and duties of receiver.-

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

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

443 (b) Operate a business constituting receivership property,  
444 including preservation, use, sale, lease, license, exchange,  
445 collection, or disposition of the property in the ordinary  
446 course of business;

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

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

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

456 (f) Upon subpoena, compel a person to submit to examination  
457 under oath, or to produce and permit inspection and copying of  
458 designated records or tangible things, with respect to  
459 receivership property or any other matter that may affect  
460 administration of the receivership;

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

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



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- 465       (i) Exercise any power conferred by court order, this  
466 chapter, or the laws of this state other than this chapter.
- 467       (2) With court approval, a receiver may:
- 468           (a) Incur debt for the use or benefit of receivership  
469 property other than in the ordinary course of business;
- 470           (b) Make improvements to receivership property;
- 471           (c) Use or transfer receivership property other than in the  
472 ordinary course of business pursuant to s. 714.16;
- 473           (d) Adopt or reject an executory contract of the owner  
474 pursuant to s. 714.17;
- 475           (e) Pay compensation to the receiver pursuant to s. 714.21,  
476 and to each professional engaged by the receiver under s.  
477 714.15;
- 478           (f) Recommend allowance or disallowance of a claim of a  
479 creditor pursuant to s. 714.20; and
- 480           (g) Make a distribution of receivership property pursuant  
481 to s. 714.20.
- 482       (3) A receiver shall:
- 483           (a) Prepare and retain appropriate business records,  
484 including a record of each receipt, disbursement, and  
485 disposition of receivership property;
- 486           (b) Account for receivership property, including the  
487 proceeds of a sale, lease, license, exchange, collection, or  
488 other disposition of the property;
- 489           (c) File with the recording office of the county in which  
490 the real property is located a copy of the order appointing the  
491 receiver and, if a legal description of the real property is not  
492 included in the order, the legal description;
- 493           (d) Disclose to the court any fact arising during the

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494 receivership which would disqualify the receiver under s.  
495 714.07; and

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

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

500 714.13 Duties of owner.—

501 (1) An owner shall:

502 (a) Assist and cooperate with the receiver in the  
503 administration of the receivership and the discharge of the  
504 receiver's duties;

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

507 (c) Identify all records and other information relating to  
508 the receivership property, including a password, authorization,  
509 or other information needed to obtain or maintain access to or  
510 control of the receivership property, and make available to the  
511 receiver the records and information in the owner's possession,  
512 custody, or control;

513 (d) Upon subpoena, submit to examination under oath by the  
514 receiver concerning the acts, conduct, property, liabilities,  
515 and financial condition of the owner or any matter relating to  
516 the receivership property or the receivership; and

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

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

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

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

527 (b) Sanction the failure as civil contempt.

528 714.14 Stay; injunction.—

529 (1) Except as otherwise provided in subsection (4), after  
530 notice and a hearing, the court may enter an order providing for  
531 a stay, applicable to all persons, of any act, action, or  
532 proceeding:

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

536 (b) To enforce a lien against all or a portion of the  
537 receivership property to the extent the lien secures a claim  
538 against the owner which arose before entry of the order. The  
539 court shall include in its order a specific description of the  
540 receivership property subject to the stay, and shall include the  
541 following language in the title of the order: "Order Staying  
542 Certain Actions to Enforce Claims against Receivership  
543 Property."

544 (2) Except as otherwise provided in subsection (4), the  
545 court may enjoin an act, action, or proceeding against or  
546 relating to receivership property if the injunction is necessary  
547 to protect against misappropriation of, or waste relating  
548 directly to, the receivership property.

549 (3) A person whose act, action, or proceeding is stayed or  
550 enjoined under this section may apply to the court for relief  
551 from the stay or injunction. The court, after a hearing on

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552 notice, may grant relief for cause shown.

553 (4) An order under subsection (1) or subsection (2) does  
554 not operate as a stay or injunction of:

555 (a) Any act, action, or proceeding to foreclose or  
556 otherwise enforce a mortgage by the person seeking appointment  
557 of the receiver;

558 (b) Any act, action, or proceeding to perfect, or maintain  
559 or continue the perfection of, an interest in receivership  
560 property;

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

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

566 (e) Establishment by a governmental unit of a tax liability  
567 against the receivership property or the owner of such  
568 receivership property, or an appeal of any such liability.

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

571 (6) The scope of the receivership property subject to the  
572 stay under subsection (1) may be modified upon request of the  
573 receiver or other person, after a hearing on notice.

574 (7) In connection with the entry of an order under  
575 subsection (1) or subsection (2), the court shall determine  
576 whether an additional bond or alternative security will be  
577 required as a condition to entry of the stay or injunction and,  
578 if required, direct the party requesting the stay or injunction  
579 to post a bond or alternative security as a condition for the  
580 stay or injunction to become effective.

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581       714.15 Engagement and compensation of professional.—

582       (1) With court approval, a receiver may engage an attorney,  
583 an accountant, an appraiser, an auctioneer, a broker, or another  
584 professional to assist the receiver in performing a duty or  
585 exercising a power of the receiver. The receiver shall disclose  
586 to the court:

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

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

589       (c) Any potential conflict of interest; and

590       (d) The proposed compensation.

591       (2) A person is not disqualified from engagement under this  
592 section solely because of the person's engagement by,  
593 representation of, or other relationship with the receiver, a  
594 creditor, or a party. This chapter does not prevent the receiver  
595 from serving in the receivership as an attorney, an accountant,  
596 an auctioneer, or a broker when authorized by law.

597       (3) A receiver or professional engaged under subsection (1)  
598 shall file with the court an itemized statement of the time  
599 spent, work performed, and billing rate of each person that  
600 performed the work and an itemized list of expenses. The  
601 receiver shall pay the amount approved by the court.

602       714.16 Use or transfer of receivership property not in  
603 ordinary course of business.—

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

607       (2) Before judgment is entered with respect to the  
608 receivership property, with court approval after notice to all  
609 parties with an interest in the property, including all lien

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610 holders, and a hearing, a receiver may use or transfer by sale,  
611 lease, license, exchange, or other disposition receivership  
612 property other than in the ordinary course of business only if  
613 the owner of the property:

614 (a) After the commencement of the action in which the  
615 receiver is appointed, expressly consents to the receiver's  
616 proposed use or transfer of the receivership property, and the  
617 receiver notes the property owner's express consent in the  
618 motion to approve the proposed use or transfer; or

619 (b) Before or at the hearing on the receiver's motion to  
620 approve the use or transfer of the receivership property, fails  
621 to object thereto after the receiver in good faith has provided  
622 reasonable advance written notice to the property owner of the  
623 proposed use or transfer, and the receiver demonstrates in the  
624 motion that the proposed use or transfer is necessary to prevent  
625 waste, loss, substantial diminution in value, dissipation, or  
626 impairment of the property or its revenue-producing potential or  
627 to prevent a voidable transaction involving the property.

628  
629 Service of notice to lien holders who are not parties to the  
630 action must be made as provided in chapter 48 for service of  
631 original process. If service cannot be carried out in such  
632 manner, upon authorization by court order, the receiver may  
633 effect service of notice on the nonparty lien holder pursuant to  
634 chapter 49 or as otherwise ordered by the court.

635 (3) After judgment is entered against the property owner  
636 and with court approval, a receiver may use or transfer  
637 receivership property other than in the ordinary course of  
638 business to carry the judgment into effect or to preserve

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639 nonexempt real property pending appeal or when an execution has  
640 been returned unsatisfied and the owner refuses to apply the  
641 property in satisfaction of the judgment.

642 (4) The court may order that a transfer of receivership  
643 property under this section is free and clear of any liens on  
644 the property at the time of the transfer. In such case, any  
645 liens on the property, which were valid at the time of the  
646 transfer but extinguished by the transfer, attach to the  
647 proceeds of the transfer with the same validity, perfection, and  
648 priority the liens had on the property immediately before the  
649 transfer, even if the proceeds are not sufficient to satisfy all  
650 obligations secured by the liens.

651 (5) A transfer under subsection (3) may occur by means  
652 other than a public auction sale. A creditor holding a valid  
653 lien on the property to be transferred may purchase the property  
654 and offset against the purchase price part or all of the allowed  
655 amount secured by the lien if the creditor tenders funds  
656 sufficient to satisfy in full the reasonable expenses of  
657 transfer and the obligation secured by any senior lien  
658 extinguished by the transfer.

659 (6) A reversal or modification of an order approving a  
660 transfer under subsection (3) does not affect the validity of  
661 the transfer to a person that acquired the property in good  
662 faith or revive against the person any lien extinguished by the  
663 transfer, whether the person knew before the transfer of the  
664 request for reversal or modification, unless the court stayed  
665 the order before the transfer.

666 714.17 Executory contract.-

667 (1) For the purposes of this section, the term "timeshare

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668 interest" has the same meaning as in s. 721.05(36).

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

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

683 (4) A provision in an executory contract which requires or  
684 permits a forfeiture, modification, or termination of the  
685 contract because of the appointment of a receiver or the  
686 financial condition of the owner does not affect a receiver's  
687 power under subsection (2) to adopt the contract.

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

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

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



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697       (6) If at the time a receiver is appointed, the owner has  
698 the right to assign an executory contract relating to  
699 receivership property under the laws of this state other than  
700 this chapter, the receiver may assign the contract with court  
701 approval.

702       (7) If a receiver rejects an executory contract for the  
703 sale of receivership property that is real property in  
704 possession of the purchaser or a real-property timeshare  
705 interest pursuant to subsection (2), the purchaser may:

706           (a) Treat the rejection as a termination of the contract,  
707 and in that case the purchaser has a lien on the property for  
708 the recovery of any part of the purchase price the purchaser  
709 paid; or

710           (b) Retain the purchaser's right to possession under the  
711 contract. If the purchaser retains his or her right to  
712 possession pursuant to this paragraph, the purchaser must  
713 continue to perform all obligations arising under the contract  
714 and may offset any damages caused by nonperformance of an  
715 obligation of the owner after the date of the rejection, but the  
716 purchaser does not have a right or claim against other  
717 receivership property or the receiver on account of the damages.

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

720           (a) The tenant occupies the leased premises as the tenant's  
721 primary residence;

722           (b) The receiver was appointed at the request of a person  
723 other than a mortgagee; or

724           (c) The receiver was appointed at the request of a  
725 mortgagee and:

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726 1. The lease is superior to the lien of the mortgage;

727 2. The tenant has an enforceable agreement with the  
728 mortgagee or the holder of a senior lien under which the  
729 tenant's occupancy will not be disturbed as long as the tenant  
730 performs its obligations under the lease;

731 3. The mortgagee has consented to the lease, either in a  
732 signed record or by its failure to timely object that the lease  
733 violated the mortgage; or

734 4. The terms of the lease were commercially reasonable at  
735 the time the lease was agreed to and the tenant did not know or  
736 have reason to know that the lease violated the mortgage.

737 714.18 Defenses and immunities of receiver.—

738 (1) A receiver is entitled to all defenses and immunities  
739 provided by the laws of this state other than this chapter for  
740 an act or omission within the scope of the receiver's  
741 appointment.

742 (2) A receiver may be sued personally for an act or  
743 omission in administering receivership property only with  
744 approval of the court that appointed the receiver.

745 714.19 Interim report of receiver.—A receiver may file or,  
746 if ordered by the court, shall file an interim report that  
747 includes:

748 (1) The activities of the receiver since appointment or a  
749 previous report;

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

752 (3) Receipts and dispositions of receivership property;

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

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755 expenses; and

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

757 714.20 Notice of appointment; claim against receivership;  
758 distribution to creditors.-

759 (1) Except as otherwise provided in subsection (6), a  
760 receiver shall give notice of appointment of the receiver to  
761 creditors of the owner by:

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

765 (b) Publication as directed by the court.

766 (2) Except as otherwise provided in subsection (6), the  
767 notice required under subsection (1) must specify the date by  
768 which each creditor holding a claim against the owner which  
769 arose before appointment of the receiver must submit the claim  
770 to the receiver. The date specified must be at least 90 days  
771 after the later of notice under paragraph (1) (a) or last  
772 publication under paragraph (1) (b). The court may extend the  
773 period for submitting the claim. Unless the court orders  
774 otherwise, a claim that is not timely submitted is not entitled  
775 to a distribution from the receivership.

776 (3) A claim submitted by a creditor under this section  
777 must:

778 (a) State the name and address of the creditor;

779 (b) State the amount and basis of the claim;

780 (c) Identify any property securing the claim;

781 (d) Be signed by the creditor under penalty of perjury; and

782 (e) Include a copy of any record on which the claim is  
783 based.

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

788       (5) At any time before entry of an order approving a  
789 receiver's final report, the receiver may file with the court an  
790 objection to a claim of a creditor, stating the basis for the  
791 objection. The court shall allow or disallow the claim according  
792 to the laws of this state other than this chapter.

793       (6) If the court concludes that receivership property is  
794 likely to be insufficient to satisfy claims of each creditor  
795 holding a perfected lien on the property, the court may order  
796 that:

797       (a) The receiver need not give notice under subsection (1)  
798 of the appointment to all creditors of the owner, but only such  
799 creditors as the court directs; and

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

802       (7) Subject to s. 714.21:

803       (a) A distribution of receivership property to a creditor  
804 holding a perfected lien on the property must be made in  
805 accordance with the creditor's priority under the laws of this  
806 state other than this chapter; and

807       (b) A distribution of receivership property to a creditor  
808 with an allowed unsecured claim must be made as the court  
809 directs according to the laws of this state other than this  
810 chapter.

811       714.21 Fees and expenses.—

812       (1) The court may award a receiver from receivership

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813 property the reasonable and necessary fees and expenses of  
814 performing the duties of the receiver and exercising the powers  
815 of the receiver.

816 (2) The court may order one or more of the following to pay  
817 the reasonable and necessary fees and expenses of the  
818 receivership, including reasonable attorney fees and costs:

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

822 (b) A person whose conduct justified or would have  
823 justified the appointment of the receiver under s. 714.06(1)(a).

824 714.22 Removal of receiver; replacement; termination of  
825 receivership.—

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

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

829 (3) If the court finds that a receiver that resigns or is  
830 removed, or the representative of a receiver that is deceased,  
831 has accounted fully for and turned over to the successor  
832 receiver all receivership property and has filed a report of all  
833 receipts and disbursements during the service of the replaced  
834 receiver, the replaced receiver is discharged.

835 (4) The court may discharge a receiver and terminate the  
836 court's administration of the receivership property if the court  
837 finds that appointment of the receiver was improvident or that  
838 the circumstances no longer warrant continuation of the  
839 receivership. If the court finds that the appointment was sought  
840 wrongfully or in bad faith, the court may assess against the  
841 person that sought the appointment:

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842       (a) The fees and expenses of the receivership, including  
843 reasonable attorney fees and costs; and

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

846       714.23 Final report of receiver; discharge.-

847       (1) Upon completion of a receiver's duties, the receiver  
848 shall file a final report including:

849       (a) A description of the activities of the receiver in the  
850 conduct of the receivership;

851       (b) A list of receivership property at the commencement of  
852 the receivership and any receivership property received during  
853 the receivership;

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

856       (d) A list of dispositions of receivership property;  
857       (e) A list of distributions made or proposed to be made  
858 from the receivership for creditor claims;

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

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

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

865       714.24 Receivership in another state; ancillary  
866 proceeding.-

867       (1) The court may appoint a receiver appointed in another  
868 state, or that person's nominee, as an ancillary receiver with  
869 respect to property located in this state or subject to the  
870 jurisdiction of the court for which a receiver could be

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871 appointed under this chapter, if:

872 (a) The person or nominee would be eligible to serve as  
873 receiver under s. 714.07; and

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

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

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

883 714.25 Effect of enforcement by mortgagee.—A request by a  
884 mortgagee for the appointment of a receiver, the appointment of  
885 a receiver, or the application by a mortgagee of receivership  
886 property or proceeds to the secured obligation does not:

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

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

890 (3) Constitute an election of remedies which precludes a  
891 later action to enforce the secured obligation;

892 (4) Make the secured obligation unenforceable;

893 (5) Limit any right available to the mortgagee with respect  
894 to the secured obligation; or

895 (6) Constitute an action under chapter 702.

896 714.26 Uniformity of application and construction.—In  
897 applying and construing this chapter, consideration must be  
898 given to the need to promote uniformity of the law with respect  
899 to its subject matter among states that have enacted a similar

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900 law.

901 714.27 Relation to electronic signatures in global and  
902 national commerce act.—This act modifies, limits, or supersedes  
903 the Electronic Signatures in Global and National Commerce Act,  
904 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or  
905 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or  
906 authorize electronic delivery of any of the notices described in  
907 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

908 714.28 Transition.—This chapter does not apply to a  
909 receivership for which the receiver was appointed before July 1,  
910 2020.

911 Section 2. This act shall take effect July 1, 2020.