

By the Committee on Commerce and Tourism; and 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; providing construction and
9 applicability; specifying that a court has exclusive
10 jurisdiction to direct receivers and determine
11 controversies under certain circumstances; providing
12 requirements and authorizations relating to the
13 appointment of a receiver; authorizing certain parties
14 to move to dissolve or modify certain orders;
15 requiring that such motions be heard within a
16 specified timeframe; specifying when a person is or is
17 not disqualified from appointment as a receiver;
18 authorizing certain persons to nominate someone to
19 serve as a receiver; specifying that the court is not
20 bound by such nomination; requiring a receiver to post
21 a bond with the court which meets certain
22 requirements; providing an exception; prohibiting a
23 claim against a receiver's bond or alternative
24 security from being made after a certain time;
25 providing that an appointed receiver has certain
26 statuses of a lien creditor; providing that certain
27 property is subject to specified security agreements;
28 providing requirements relating to the collection and
29 turnover of receivership property; providing for

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

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

83

84 Be It Enacted by the Legislature of the State of Florida:

85

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

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CHAPTER 714

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

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

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

(1) "Affiliate" means:

(a) With respect to an individual:

1. A companion of the individual;

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

a. The individual; or

b. A companion of the individual;

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

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

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

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

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

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

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

(2) "Companion" means:

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

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

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

150 (c) Rights arising out of receivership property.

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

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

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

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

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

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

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

179 (18) "Rents" means:

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

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

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

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

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

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

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

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

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

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

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204 (b) To attach to or logically associate with the record an
205 electronic sound, symbol, or process.

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

210 714.03 Notice and opportunity for hearing.-

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

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

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

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

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

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233 state findings by the court as to why the injury may be
234 irreparable, and must give the reasons why the order was granted
235 without notice if notice was not given. The order appointing a
236 receiver shall remain in effect until the further order of the
237 court.

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

244 714.04 Scope; exclusions.—

245 (1) This chapter applies to a receivership initiated in a
246 court of this state for an interest in real property and any
247 incidental personal property related to or used in operating the
248 real property.

249 (2) This chapter does not apply to:

250 (a) Actions in which a state agency or officer is expressly
251 authorized by statute to seek or obtain the appointment of a
252 receiver;

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

254 (c) Real property improved by one or two dwelling units
255 which includes the homestead of an individual owner or an
256 affiliate of an individual owner;

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

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

261 (3) This chapter does not limit the authority of a court to

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262 appoint a receiver under the laws of this state other than this
263 chapter.

264 (4) This chapter does not limit an individual's homestead
265 rights under the laws of this state or federal law.

266 (5) Unless displaced by a particular provision of this
267 chapter, the principles of law and equity, including the law
268 relative to capacity to contract, principal and agent, estoppel,
269 laches, fraud, misrepresentation, duress, coercion, mistake,
270 bankruptcy, or other validating or invalidating cause,
271 supplement this chapter.

272 714.05 Power of the court.—The court that appoints a
273 receiver under this chapter has exclusive jurisdiction to direct
274 the receiver and determine any controversy related to the
275 receivership or receivership property.

276 714.06 Appointment of receiver.—

277 (1) The court may appoint a receiver:

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

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

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

286 (b) After judgment:

287 1. To carry the judgment into effect; or

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

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

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

297 (2) In connection with the foreclosure or other enforcement
298 of a mortgage, the court shall consider the following facts and
299 circumstances, together with any other relevant facts, in
300 deciding whether to appoint a receiver for the mortgaged
301 property:

302 (a) Appointment is necessary to protect the property from
303 waste, loss, substantial diminution in value, transfer,
304 dissipation, or impairment;

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

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

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

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

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

315 (3) The court may condition the appointment of a receiver
316 without prior notice or hearing under s. 714.03 on the giving of
317 security by the person seeking the appointment for the payment
318 of damages, reasonable attorney fees, and costs incurred or
319 suffered by any person if the court later concludes that the

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320 appointment was not justified. If the court later concludes that
321 the appointment was justified and the order of appointment of
322 the receiver becomes final and no longer subject to appeal, the
323 court shall release the bond or other security. When any order
324 appointing a receiver or providing for injunctive relief is
325 issued on the pleading of a municipality or the state, or any
326 officer, agency, or political subdivision thereof, the court may
327 require or dispense with a bond, with or without surety, and
328 conditioned in the same manner, having due regard for public
329 interest.

330 (4) A party adversely affected by an order appointing a
331 receiver may move to dissolve or modify the order at any time.
332 If a party moves to dissolve or modify the order, the motion
333 must be heard within 5 days after the movant applies for a
334 hearing on the motion or at such time as the court determines is
335 reasonable and appropriate under the circumstances after the
336 movant applies for a hearing on the motion. After notice and a
337 hearing, the court may grant relief for cause shown.

338 714.07 Disqualification from appointment as receiver;
339 disclosure of interest.-

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

343 (2) Except as otherwise provided in subsection (3), a
344 person is disqualified from appointment as receiver if the
345 person:

346 (a) Is an affiliate of a party;

347 (b) Has an interest materially adverse to an interest of a
348 party;

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349 (c) Has a material financial interest in the outcome of the
350 action, other than compensation the court may allow the
351 receiver;

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

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

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

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

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

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

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

368 714.08 Receiver's bond; alternative security.—

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

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

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

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

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

377 (2) The court may approve the receiver posting an

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378 alternative security with the court, such as a letter of credit
379 or deposit of funds. The receiver may not use receivership
380 property as alternative security. Interest that accrues on
381 deposited funds must be paid to the receiver upon the receiver's
382 discharge.

383 (3) The court may authorize a receiver to act before the
384 receiver posts the bond or alternative security required by this
385 section if the action is necessary to prevent or mitigate
386 immediate injury, loss, or damage to the party who sought the
387 appointment of the receiver, or immediate waste, dissipation,
388 impairment, or substantial diminution in value to the
389 receivership property.

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

393 714.09 Status of receiver as lien creditor.—Upon
394 appointment of a receiver, the receiver has the status of a lien
395 creditor under:

396 (1) Chapter 679 as to receivership property or fixtures;
397 and

398 (2) Chapter 695 as to receivership property that is real
399 property.

400 714.10 Security agreement covering after-acquired
401 property.—Except as otherwise provided by law other than this
402 chapter, property that a receiver or an owner acquires after
403 appointment of the receiver is subject to a security agreement
404 entered into before the appointment to the same extent as if the
405 court had not appointed the receiver.

406 714.11 Collection and turnover of receivership property.—

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

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

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

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

419 (3) If a creditor has possession, custody, or control of
420 receivership property and the validity, perfection, or priority
421 of the creditor's lien on the property depends on the creditor's
422 possession, custody, or control, the creditor may retain
423 possession, custody, or control until the court orders adequate
424 protection of the creditor's lien.

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

429 714.12 Powers and duties of receiver.-

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

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

434 (b) Operate a business constituting receivership property,
435 including preservation, use, sale, lease, license, exchange,

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436 collection, or disposition of the property in the ordinary
437 course of business;

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

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

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

447 (f) Upon subpoena, compel a person to submit to examination
448 under oath, or to produce and permit inspection and copying of
449 designated records or tangible things, with respect to
450 receivership property or any other matter that may affect
451 administration of the receivership;

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

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

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

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

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

461 (b) Make improvements to receivership property;

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

464 (d) Adopt or reject an executory contract of the owner

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465 pursuant to s. 714.17;

466 (e) Pay compensation to the receiver pursuant to s. 714.21,
467 and to each professional engaged by the receiver under s.
468 714.15;

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

471 (g) Make a distribution of receivership property pursuant
472 to s. 714.20.

473 (3) A receiver shall:

474 (a) Prepare and retain appropriate business records,
475 including a record of each receipt, disbursement, and
476 disposition of receivership property;

477 (b) Account for receivership property, including the
478 proceeds of a sale, lease, license, exchange, collection, or
479 other disposition of the property;

480 (c) File with the recording office of the county in which
481 the real property is located a copy of the order appointing the
482 receiver and, if a legal description of the real property is not
483 included in the order, the legal description;

484 (d) Disclose to the court any fact arising during the
485 receivership which would disqualify the receiver under s.
486 714.07; and

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

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

491 714.13 Duties of owner.—

492 (1) An owner shall:

493 (a) Assist and cooperate with the receiver in the

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494 administration of the receivership and the discharge of the
495 receiver's duties;

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

498 (c) Identify all records and other information relating to
499 the receivership property, including a password, authorization,
500 or other information needed to obtain or maintain access to or
501 control of the receivership property, and make available to the
502 receiver the records and information in the owner's possession,
503 custody, or control;

504 (d) Upon subpoena, submit to examination under oath by the
505 receiver concerning the acts, conduct, property, liabilities,
506 and financial condition of the owner or any matter relating to
507 the receivership property or the receivership; and

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

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

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

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

518 (b) Sanction the failure as civil contempt.

519 714.14 Stay; injunction.-

520 (1) Except as otherwise provided in subsection (5), after
521 notice and opportunity for a hearing, the court may enter an
522 order providing for a stay, applicable to all persons, of any

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523 act, action, or proceeding:

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

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

530

531 The court shall include in its order a specific description of
532 the receivership property subject to the stay, and shall include
533 the following language in the title of the order: "Order Staying
534 Certain Actions to Enforce Claims against Receivership
535 Property."

536 (2) Except as otherwise provided in subsection (5), the
537 court may enjoin an act, action, or proceeding against or
538 relating to receivership property if the injunction is necessary
539 to protect against misappropriation of, or waste relating
540 directly to, the receivership property.

541 (3) If the court grants injunctive relief, the injunction
542 must specify the reasons for entry and must describe in
543 reasonable detail the act or acts restrained without reference
544 to a pleading or other document. The injunction is binding on
545 the parties to the action; on the parties' officers, agents,
546 servants, employees, and attorneys; and on any person who
547 receives actual notice of the injunction and is in active
548 concert or participation with the parties.

549 (4) A person whose act, action, or proceeding is stayed or
550 enjoined under this section, or who is otherwise adversely
551 affected by such stay or injunction, may apply to the court for

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552 relief from the stay or injunction. If a person moves for such
553 relief, the motion must be heard within 5 days after the movant
554 applies for a hearing on the motion or at such time as the court
555 determines is reasonable and appropriate under the circumstances
556 after the movant applies for a hearing on the motion. After
557 notice and a hearing, the court may grant relief for cause
558 shown.

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

561 (a) Any act, action, or proceeding to foreclose or
562 otherwise enforce a mortgage by the person seeking appointment
563 of the receiver;

564 (b) Any act, action, or proceeding to perfect, or maintain
565 or continue the perfection of, an interest in receivership
566 property;

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

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

572 (e) Establishment by a governmental unit of a tax liability
573 against the receivership property or the owner of such
574 receivership property, or an appeal of any such liability.

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

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

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581 (8) In connection with the entry of an order under
582 subsection (1) or subsection (2), the court shall determine
583 whether an additional bond or alternative security will be
584 required as a condition to entry of the stay or injunction and,
585 if required, direct the party requesting the stay or injunction
586 to post a bond or alternative security as a condition for the
587 stay or injunction to become effective.

588 714.15 Engagement and compensation of professional.—

589 (1) With court approval, a receiver may engage an attorney,
590 an accountant, an appraiser, an auctioneer, a broker, or another
591 professional to assist the receiver in performing a duty or
592 exercising a power of the receiver. The receiver shall disclose
593 to the court:

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

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

596 (c) Any potential conflict of interest; and

597 (d) The proposed compensation.

598 (2) A person is not disqualified from engagement under this
599 section solely because of the person's engagement by,
600 representation of, or other relationship with the receiver, a
601 creditor, or a party. This chapter does not prevent the receiver
602 from serving in the receivership as an attorney, an accountant,
603 an auctioneer, or a broker when authorized by law.

604 (3) A receiver or professional engaged under subsection (1)
605 shall file with the court an itemized statement of the time
606 spent, work performed, and billing rate of each person that
607 performed the work and an itemized list of expenses. The
608 receiver shall pay the amount approved by the court.

609 714.16 Use or transfer of receivership property not in

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610 ordinary course of business.-

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

614 (2) Before judgment is entered with respect to the
615 receivership property in the action in which the receiver is
616 appointed, with court approval after notice to all parties with
617 an interest in the property, including all lienholders, and a
618 hearing, a receiver may use or transfer by sale, lease, license,
619 exchange, or other disposition receivership property other than
620 in the ordinary course of business only if the owner of the
621 property:

622 (a) After the commencement of the action in which the
623 receiver is appointed, expressly consents in writing to the
624 receiver's proposed use or transfer of the receivership
625 property, and the receiver notes the property owner's express
626 consent in the motion to approve the proposed use or transfer;
627 or

628 (b) Before or at the hearing on the receiver's motion to
629 approve the use or transfer of the receivership property, fails
630 to object thereto after the receiver in good faith has provided
631 reasonable advance written notice to the property owner of the
632 proposed use or transfer, and the receiver demonstrates in the
633 motion that the proposed use or transfer is necessary to prevent
634 waste, loss, substantial diminution in value, dissipation, or
635 impairment of the property or its revenue-producing potential or
636 to prevent a voidable transaction involving the property.

637
638 Service of notice to lienholders who are not parties to the

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639 action must be made as provided in chapter 48 for service of
640 original process or, in the case of a financial institution
641 lienholder, as provided in s. 655.0201. If service cannot be
642 effectuated in such manner, upon authorization by court order,
643 the receiver may effect service of notice on the nonparty
644 lienholder pursuant to chapter 49 or as otherwise ordered by the
645 court.

646 (3) After judgment is entered against the property owner
647 and with court approval in the action in which the receiver is
648 appointed, a receiver may use or transfer receivership property
649 other than in the ordinary course of business to carry the
650 judgment into effect or to preserve nonexempt real property
651 pending appeal or when an execution has been returned
652 unsatisfied and the owner refuses to apply the property in
653 satisfaction of the judgment.

654 (4) The court may order that a transfer of receivership
655 property under this section is free and clear of any liens on
656 the property at the time of the transfer. In such case, any
657 liens on the property, which were valid at the time of the
658 transfer but extinguished by the transfer, attach to the
659 proceeds of the transfer with the same validity, perfection, and
660 priority the liens had on the property immediately before the
661 transfer, even if the proceeds are not sufficient to satisfy all
662 obligations secured by the liens.

663 (5) A transfer under subsection (3) may occur by means
664 other than a public auction sale. A creditor holding a valid
665 lien on the property to be transferred may purchase the property
666 and offset against the purchase price part or all of the allowed
667 amount secured by the lien if the creditor tenders funds

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668 sufficient to satisfy in full the reasonable expenses of
669 transfer and the obligation secured by any senior lien
670 extinguished by the transfer.

671 (6) A reversal or modification of an order approving a
672 transfer under subsection (3) does not affect the validity of
673 the transfer to a person that acquired the property in good
674 faith or revive against the person any lien extinguished by the
675 transfer, whether the person knew before the transfer of the
676 request for reversal or modification, unless the court stayed
677 the order before the transfer.

678 714.17 Executory contract.—

679 (1) For the purposes of this section, the term "timeshare
680 interest" has the same meaning as in s. 721.05(36).

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

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

695 (4) A provision in an executory contract which requires or
696 permits a forfeiture, modification, or termination of the

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697 contract because of the appointment of a receiver or the
698 financial condition of the owner does not affect a receiver's
699 power under subsection (2) to adopt the contract.

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

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

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

709 (6) If at the time a receiver is appointed, the owner has
710 the right to assign an executory contract relating to
711 receivership property under the laws of this state other than
712 this chapter, the receiver may assign the contract with court
713 approval.

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

718 (a) Treat the rejection as a termination of the contract,
719 and in that case the purchaser has a lien on the property for
720 the recovery of any part of the purchase price the purchaser
721 paid; or

722 (b) Retain the purchaser's right to possession under the
723 contract. If the purchaser retains his or her right to
724 possession pursuant to this paragraph, the purchaser must
725 continue to perform all obligations arising under the contract

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726 and may offset any damages caused by nonperformance of an
727 obligation of the owner after the date of the rejection, but the
728 purchaser does not have a right or claim against other
729 receivership property or the receiver on account of the damages.

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

732 (a) The tenant occupies the leased premises as the tenant's
733 primary residence;

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

736 (c) The receiver was appointed at the request of a
737 mortgagee and:

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

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

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

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

749 714.18 Defenses and immunities of receiver.—

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

754 (2) A receiver may be sued personally for an act or

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755 omission in administering receivership property only with
756 approval of the court that appointed the receiver.

757 714.19 Interim report of receiver.—A receiver may file or,
758 if ordered by the court, shall file an interim report that
759 includes:

760 (1) The activities of the receiver since appointment or a
761 previous report;

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

764 (3) Receipts and dispositions of receivership property;

765 (4) Fees and expenses of the receiver and, if not filed
766 separately, a request for approval of payment of the fees and
767 expenses; and

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

769 714.20 Notice of appointment; claim against receivership;
770 distribution to creditors.—

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

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

777 (b) Publication as directed by the court.

778 (2) Except as otherwise provided in subsection (6), the
779 notice required under subsection (1) must specify the date by
780 which each creditor holding a claim against the owner which
781 arose before appointment of the receiver must submit the claim
782 to the receiver. The date specified must be at least 90 days
783 after the later of notice under paragraph (1) (a) or last

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784 publication under paragraph (1) (b). The court may extend the
785 period for submitting the claim. Unless the court orders
786 otherwise, a claim that is not timely submitted is not entitled
787 to a distribution from the receivership.

788 (3) A claim submitted by a creditor under this section
789 must:

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

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

792 (c) Identify any property securing the claim;

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

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

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

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

805 (6) If the court concludes that receivership property is
806 likely to be insufficient to satisfy claims of each creditor
807 holding a perfected lien on the property, the court may order
808 that:

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

812 (b) Unsecured creditors need not submit claims under this

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813 section.

814 (7) Subject to s. 714.21:

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

819 (b) A distribution of receivership property to a creditor
820 with an allowed unsecured claim must be made as the court
821 directs according to the laws of this state other than this
822 chapter.

823 714.21 Fees and expenses.—

824 (1) The court may award a receiver from receivership
825 property the reasonable and necessary fees and expenses of
826 performing the duties of the receiver and exercising the powers
827 of the receiver.

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

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

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

836 714.22 Removal of receiver; replacement; termination of
837 receivership.—

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

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

841 (3) If the court finds that a receiver that resigns or is

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842 removed, or the representative of a receiver that is deceased,
843 has accounted fully for and turned over to the successor
844 receiver all receivership property and has filed a report of all
845 receipts and disbursements during the service of the replaced
846 receiver, the replaced receiver is discharged.

847 (4) The court may discharge a receiver and terminate the
848 court's administration of the receivership property if the court
849 finds that appointment of the receiver was improvident or that
850 the circumstances no longer warrant continuation of the
851 receivership. If the court finds that the appointment was sought
852 wrongfully or in bad faith, the court may assess against the
853 person that sought the appointment:

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

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

858 714.23 Final report of receiver; discharge.-

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

861 (a) A description of the activities of the receiver in the
862 conduct of the receivership;

863 (b) A list of receivership property at the commencement of
864 the receivership and any receivership property received during
865 the receivership;

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

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

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

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

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

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

877 714.24 Receivership in another state; ancillary
878 proceeding.-

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

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

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

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

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

895 714.25 Effect of enforcement by mortgagee.-A request by a
896 mortgagee for the appointment of a receiver, the appointment of
897 a receiver, or the application by a mortgagee of receivership
898 property or proceeds to the secured obligation does not:

899 (1) Make the mortgagee a mortgagee in possession of the

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900 real property;
901 (2) Make the mortgagee an agent of the owner;
902 (3) Constitute an election of remedies which precludes a
903 later action to enforce the secured obligation;
904 (4) Make the secured obligation unenforceable;
905 (5) Limit any right available to the mortgagee with respect
906 to the secured obligation; or
907 (6) Constitute an action under chapter 702.
908 714.26 Uniformity of application and construction.—In
909 applying and construing this chapter, consideration must be
910 given to the need to promote uniformity of the law with respect
911 to its subject matter among states that have enacted a similar
912 law.
913 714.27 Relation to electronic signatures in global and
914 national commerce act.—This act modifies, limits, or supersedes
915 the Electronic Signatures in Global and National Commerce Act,
916 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
917 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
918 authorize electronic delivery of any of the notices described in
919 s. 103(b) of that act, 15 U.S.C. s. 7003(b).
920 714.28 Transition.—This chapter does not apply to a
921 receivership for which the receiver was appointed before July 1,
922 2020.
923 Section 2. This act shall take effect July 1, 2020.