

ENROLLED

CS/HB 783

2020 Legislature

1
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

ENROLLED

CS/HB 783

2020 Legislature

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
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; providing
36 requirements for certain injunctions; authorizing
37 certain persons to apply for relief from a stay or
38 injunction; requiring that certain motions be heard
39 within a specified timeframe; specifying when an order
40 does not operate as a stay or injunction; authorizing
41 receivers to engage and compensate certain
42 professionals under certain circumstances; requiring
43 certain persons to file an itemized statement with the
44 court; requiring a receiver to pay an amount approved
45 by the court; defining the term "good faith";
46 authorizing a receiver to use or transfer receivership
47 property other than in the ordinary course of business
48 under certain circumstances; providing for the service
49 of notice to lienholders who are not parties to the
50 action; defining the term "timeshare interest";

ENROLLED

CS/HB 783

2020 Legislature

51 | authorizing a receiver to adopt or reject an executory
52 | contract of the owner relating to receivership
53 | property under certain circumstances; requiring that a
54 | claim of damages for rejection of a contract be
55 | submitted within a specified timeframe; authorizing a
56 | purchaser to take certain actions if a receiver
57 | rejects an executory contract under certain
58 | circumstances; prohibiting a receiver from rejecting
59 | unexpired leases of certain property under certain
60 | circumstances; providing for defenses and immunities
61 | of a receiver; providing requirements for interim
62 | reports filed by a receiver; providing requirements
63 | relating to notices of appointment; authorizing the
64 | court to enter certain orders if the court concludes
65 | that receivership property is likely to be
66 | insufficient to satisfy certain claims; providing
67 | requirements for certain distributions of receivership
68 | property; authorizing a court to award fees and
69 | expenses; authorizing a court to order certain persons
70 | to pay fees and expenses; providing for the removal
71 | and replacement of a receiver and the termination of a
72 | court's administration of the receivership property
73 | under certain circumstances; requiring a receiver to
74 | file a final report containing certain information
75 | upon completion of the receiver's duties; specifying

ENROLLED

CS/HB 783

2020 Legislature

76 | that a receiver is discharged if certain requirements
 77 | are met; authorizing a court to appoint ancillary
 78 | receivers under certain circumstances; providing for
 79 | rights, powers, and duties of an ancillary receiver;
 80 | specifying that certain requests, appointments, and
 81 | applications by a mortgagee do not have certain
 82 | effects; providing construction and applicability;
 83 | providing an effective date.

84 |

85 | Be It Enacted by the Legislature of the State of Florida:

86 |

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

89 |

CHAPTER 714

90 |

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

91 |

714.01 Short title.—This chapter may be cited as the

92 |

"Uniform Commercial Real Estate Receivership Act."

93 |

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

94 |

term:

95 |

(1) "Affiliate" means:

96 |

(a) With respect to an individual:

97 |

1. A companion of the individual;

98 |

2. A lineal ancestor or descendent, whether by blood or

99 |

adoption, of:

100 |

a. The individual; or

ENROLLED

CS/HB 783

2020 Legislature

101 b. A companion of the individual;
 102 3. A companion of an ancestor or descendent as described
 103 in subparagraph 2.;
 104 4. A sibling, aunt, uncle, great aunt, great uncle, first
 105 cousin, niece, nephew, grandniece, or grandnephew of the
 106 individual, whether related by the whole or the half blood or
 107 adoption, or a companion of any of them; or
 108 5. Any other person occupying the residence of the
 109 individual; and
 110 (b) With respect to a person other than an individual:
 111 1. Another person who directly or indirectly controls, is
 112 controlled by, or is under common control with the person;
 113 2. An officer, director, manager, member, partner,
 114 employee, or trustee or other fiduciary of the person; or
 115 3. A companion of an individual or an individual occupying
 116 the residence of an individual.
 117 (2) "Companion" means:
 118 (a) The spouse of an individual;
 119 (b) The registered domestic partner of an individual; or
 120 (c) Another individual in a civil union with an
 121 individual.
 122 (3) "Court" means the court of general equity jurisdiction
 123 in this state.
 124 (4) "Executory contract" means a contract, including a
 125 lease, under which each party has an unperformed obligation and

ENROLLED

CS/HB 783

2020 Legislature

126 | the failure of a party to complete performance would constitute
 127 | a material breach.

128 | (5) "Governmental unit" means an office, department,
 129 | division, bureau, board, commission, or other agency of this
 130 | state or a subdivision of this state.

131 | (6) "Lien" means an interest in property which secures
 132 | payment or performance of an obligation.

133 | (7) "Mortgage" means a record, however denominated, that
 134 | creates or provides for a consensual lien on real property or
 135 | rents, even if the record also creates or provides for a lien on
 136 | personal property.

137 | (8) "Mortgagee" means a person entitled to enforce an
 138 | obligation secured by a mortgage.

139 | (9) "Mortgagor" means a person who grants a mortgage or a
 140 | successor in ownership of the real property described in the
 141 | mortgage.

142 | (10) "Owner" means the person for whose property a
 143 | receiver is appointed.

144 | (11) "Person" means an individual, estate, business or
 145 | nonprofit entity, public corporation, government or governmental
 146 | subdivision, agency, or instrumentality or other legal entity.

147 | (12) "Proceeds" means any of the following property:

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

150 | (b) Whatever is collected on, or distributed on account

ENROLLED

CS/HB 783

2020 Legislature

151 of, receivership property.

152 (c) Rights arising out of receivership property.

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

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

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

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

171 (15) "Receivership" means a proceeding in which a receiver
 172 is appointed.

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

ENROLLED

CS/HB 783

2020 Legislature

176 offspring, rents, or profits of or from the property.

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

181 (18) "Rents" means:

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

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

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

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

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

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

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

ENROLLED

CS/HB 783

2020 Legislature

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

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

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

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

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

212 714.03 Notice and opportunity for hearing.—

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

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

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

225 (b) The movant's attorney certifies in writing all efforts

ENROLLED

CS/HB 783

2020 Legislature

226 | that have been made to give notice to all known adverse parties,
 227 | or the reasons why such notice should not be required.

228 | (3) Only an affidavit, a declaration or a verified
 229 | pleading, or a motion may be used to support the application for
 230 | the appointment of a receiver, unless the adverse party appears
 231 | at the hearing or has received reasonable prior notice of the
 232 | hearing. Every order appointing a receiver without notice must
 233 | be endorsed with the date and hour of entry, must be filed
 234 | forthwith in the clerk's office, must define the injury, must
 235 | state findings by the court as to why the injury may be
 236 | irreparable, and must give the reasons why the order was granted
 237 | without notice if notice was not given. The order appointing a
 238 | receiver shall remain in effect until the further order of the
 239 | court.

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

246 | 714.04 Scope; exclusions.-

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

ENROLLED

CS/HB 783

2020 Legislature

251 (2) This chapter does not apply to:
 252 (a) Actions in which a state agency or officer is
 253 expressly authorized by statute to seek or obtain the
 254 appointment of a receiver;
 255 (b) Actions authorized by or commenced under federal law;
 256 (c) Real property improved by one or two dwelling units
 257 which includes the homestead of an individual owner or an
 258 affiliate of an individual owner;
 259 (d) Property of an individual exempt from forced sale,
 260 execution, or seizure under the laws of this state; or
 261 (e) Personal property of an individual which is used
 262 primarily for personal, family, or household purposes.
 263 (3) This chapter does not limit the authority of a court
 264 to appoint a receiver under the laws of this state other than
 265 this chapter.
 266 (4) This chapter does not limit an individual's homestead
 267 rights under the laws of this state or federal law.
 268 (5) Unless displaced by a particular provision of this
 269 chapter, the principles of law and equity, including the law
 270 relative to capacity to contract, principal and agent, estoppel,
 271 laches, fraud, misrepresentation, duress, coercion, mistake,
 272 bankruptcy, or other validating or invalidating cause,
 273 supplement this chapter.
 274 714.05 Power of the court.—The court that appoints a
 275 receiver under this chapter has exclusive jurisdiction to direct

ENROLLED

CS/HB 783

2020 Legislature

276 | the receiver and determine any controversy related to the
 277 | receivership or receivership property.
 278 | 714.06 Appointment of receiver.—
 279 | (1) The court may appoint a receiver:
 280 | (a) Before judgment, to protect a party that demonstrates
 281 | an apparent right, title, or interest in real property that is
 282 | the subject of the action, if the property or its revenue-
 283 | producing potential:
 284 | 1. Is being subjected to or is in danger of waste, loss,
 285 | substantial diminution in value, dissipation, or impairment; or
 286 | 2. Has been or is about to be the subject of a voidable
 287 | transaction;
 288 | (b) After judgment:
 289 | 1. To carry the judgment into effect; or
 290 | 2. To preserve nonexempt real property pending appeal or
 291 | when an execution has been returned unsatisfied and the owner
 292 | refuses to apply the property in satisfaction of the judgment;
 293 | (c) In an action in which a receiver for real property may
 294 | be appointed on equitable grounds, subject to the requirements
 295 | of paragraphs (a) and (b); or
 296 | (d) During the time allowed for redemption, to preserve
 297 | real property sold in an execution or foreclosure sale and
 298 | secure its rents to the person entitled to the rents.
 299 | (2) In connection with the foreclosure or other
 300 | enforcement of a mortgage, the court shall consider the

ENROLLED

CS/HB 783

2020 Legislature

301 following facts and circumstances, together with any other
302 relevant facts, in deciding whether to appoint a receiver for
303 the mortgaged property:

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

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

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

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

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

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

317 (3) The court may condition the appointment of a receiver
318 without prior notice or hearing under s. 714.03 on the giving of
319 security by the person seeking the appointment for the payment
320 of damages, reasonable attorney fees, and costs incurred or
321 suffered by any person if the court later concludes that the
322 appointment was not justified. If the court later concludes that
323 the appointment was justified and the order of appointment of
324 the receiver becomes final and no longer subject to appeal, the
325 court shall release the bond or other security. When any order

ENROLLED

CS/HB 783

2020 Legislature

326 appointing a receiver or providing for injunctive relief is
 327 issued on the pleading of a municipality or the state, or any
 328 officer, agency, or political subdivision thereof, the court may
 329 require or dispense with a bond, with or without surety, and
 330 conditioned in the same manner, having due regard for public
 331 interest.

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

340 714.07 Disqualification from appointment as receiver;
 341 disclosure of interest.—

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

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

348 (a) Is an affiliate of a party;

349 (b) Has an interest materially adverse to an interest of a
 350 party;

ENROLLED

CS/HB 783

2020 Legislature

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

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

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

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

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

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

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

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

370 714.08 Receiver's bond; alternative security.-

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

373 (a) Is conditioned on the faithful discharge of the
 374 receiver's duties;

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

ENROLLED

CS/HB 783

2020 Legislature

376 (c) Is in an amount the court specifies; and
 377 (d) Is effective as of the date of the receiver's
 378 appointment.

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

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

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

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

398 (1) Chapter 679 as to receivership property or fixtures;
 399 and

400 (2) Chapter 695 as to receivership property that is real

ENROLLED

CS/HB 783

2020 Legislature

401 property.

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

408 714.11 Collection and turnover of receivership property.—

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

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

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

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

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

ENROLLED

CS/HB 783

2020 Legislature

426 protection of the creditor's lien.
 427 (4) Unless a bona fide dispute exists about a receiver's
 428 right to possession, custody, or control of receivership
 429 property, the court may sanction as civil contempt a person's
 430 failure to turn the property over when required by this section.
 431 714.12 Powers and duties of receiver.—
 432 (1) Except as limited by court order or the laws of this
 433 state other than this chapter, a receiver may:
 434 (a) Collect, control, manage, conserve, and protect
 435 receivership property;
 436 (b) Operate a business constituting receivership property,
 437 including preservation, use, sale, lease, license, exchange,
 438 collection, or disposition of the property in the ordinary
 439 course of business;
 440 (c) In the ordinary course of business, incur unsecured
 441 debt and pay expenses incidental to the receiver's preservation,
 442 use, sale, lease, license, exchange, collection, or disposition
 443 of receivership property;
 444 (d) Assert a right, claim, cause of action, or defense of
 445 the owner which relates to receivership property;
 446 (e) Seek and obtain instruction from the court concerning
 447 receivership property, exercise of the receiver's powers, and
 448 performance of the receiver's duties;
 449 (f) Upon subpoena, compel a person to submit to
 450 examination under oath, or to produce and permit inspection and

ENROLLED

CS/HB 783

2020 Legislature

451 copying of designated records or tangible things, with respect
 452 to receivership property or any other matter that may affect
 453 administration of the receivership;
 454 (g) Engage a professional pursuant to s. 714.15;
 455 (h) Apply to a court of another state for appointment as
 456 ancillary receiver with respect to receivership property located
 457 in that state; and
 458 (i) Exercise any power conferred by court order, this
 459 chapter, or the laws of this state other than this chapter.
 460 (2) With court approval, a receiver may:
 461 (a) Incur debt for the use or benefit of receivership
 462 property other than in the ordinary course of business;
 463 (b) Make improvements to receivership property;
 464 (c) Use or transfer receivership property other than in
 465 the ordinary course of business pursuant to s. 714.16;
 466 (d) Adopt or reject an executory contract of the owner
 467 pursuant to s. 714.17;
 468 (e) Pay compensation to the receiver pursuant to s.
 469 714.21, and to each professional engaged by the receiver under
 470 s. 714.15;
 471 (f) Recommend allowance or disallowance of a claim of a
 472 creditor pursuant to s. 714.20; and
 473 (g) Make a distribution of receivership property pursuant
 474 to s. 714.20.
 475 (3) A receiver shall:

ENROLLED

CS/HB 783

2020 Legislature

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

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

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

486 (d) Disclose to the court any fact arising during the
 487 receivership which would disqualify the receiver under s.
 488 714.07; and

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

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

493 714.13 Duties of owner.—

494 (1) An owner shall:

495 (a) Assist and cooperate with the receiver in the
 496 administration of the receivership and the discharge of the
 497 receiver's duties;

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

ENROLLED

CS/HB 783

2020 Legislature

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

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

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

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

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

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

521 (b) Sanction the failure as civil contempt.

522 714.14 Stay; injunction.—

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

ENROLLED

CS/HB 783

2020 Legislature

526 act, action, or proceeding:

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

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

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

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

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

ENROLLED

CS/HB 783

2020 Legislature

551 concert or participation with the parties.

552 (4) A person whose act, action, or proceeding is stayed or
553 enjoined under this section, or who is otherwise adversely
554 affected by such stay or injunction, may apply to the court for
555 relief from the stay or injunction. If a person moves for such
556 relief, the motion must be heard within 5 days after the movant
557 applies for a hearing on the motion or at such time as the court
558 determines is reasonable and appropriate under the circumstances
559 after the movant applies for a hearing on the motion. After
560 notice and a hearing, the court may grant relief for cause
561 shown.

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

564 (a) Any act, action, or proceeding to foreclose or
565 otherwise enforce a mortgage by the person seeking appointment
566 of the receiver;

567 (b) Any act, action, or proceeding to perfect, or maintain
568 or continue the perfection of, an interest in receivership
569 property;

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

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

575 (e) Establishment by a governmental unit of a tax

ENROLLED

CS/HB 783

2020 Legislature

576 liability against the receivership property or the owner of such
 577 receivership property, or an appeal of any such liability.

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

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

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

591 714.15 Engagement and compensation of professional.—

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

- 597 (a) The identity and qualifications of the professional;
- 598 (b) The scope and nature of the proposed engagement;
- 599 (c) Any potential conflict of interest; and
- 600 (d) The proposed compensation.

ENROLLED

CS/HB 783

2020 Legislature

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

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

612 714.16 Use or transfer of receivership property not in
613 ordinary course of business.-

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

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

625 (a) After the commencement of the action in which the

ENROLLED

CS/HB 783

2020 Legislature

626 receiver is appointed, expressly consents in writing to the
 627 receiver's proposed use or transfer of the receivership
 628 property, and the receiver notes the property owner's express
 629 consent in the motion to approve the proposed use or transfer;
 630 or

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

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

649 (3) After judgment is entered against the property owner
 650 and with court approval in the action in which the receiver is

ENROLLED

CS/HB 783

2020 Legislature

651 appointed, a receiver may use or transfer receivership property
652 other than in the ordinary course of business to carry the
653 judgment into effect or to preserve nonexempt real property
654 pending appeal or when an execution has been returned
655 unsatisfied and the owner refuses to apply the property in
656 satisfaction of the judgment.

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

666 (5) A transfer under subsection (3) may occur by means
667 other than a public auction sale. A creditor holding a valid
668 lien on the property to be transferred may purchase the property
669 and offset against the purchase price part or all of the allowed
670 amount secured by the lien if the creditor tenders funds
671 sufficient to satisfy in full the reasonable expenses of
672 transfer and the obligation secured by any senior lien
673 extinguished by the transfer.

674 (6) A reversal or modification of an order approving a
675 transfer under subsection (3) does not affect the validity of

ENROLLED

CS/HB 783

2020 Legislature

676 the transfer to a person that acquired the property in good
677 faith or revive against the person any lien extinguished by the
678 transfer, whether the person knew before the transfer of the
679 request for reversal or modification, unless the court stayed
680 the order before the transfer.

681 714.17 Executory contract.—

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

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

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

698 (4) A provision in an executory contract which requires or
699 permits a forfeiture, modification, or termination of the
700 contract because of the appointment of a receiver or the

ENROLLED

CS/HB 783

2020 Legislature

701 financial condition of the owner does not affect a receiver's
702 power under subsection (2) to adopt the contract.

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

709 (a) The time set for submitting a claim in the
710 receivership; or

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

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

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

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

725 (b) Retain the purchaser's right to possession under the

ENROLLED

CS/HB 783

2020 Legislature

726 contract. If the purchaser retains his or her right to
 727 possession pursuant to this paragraph, the purchaser must
 728 continue to perform all obligations arising under the contract
 729 and may offset any damages caused by nonperformance of an
 730 obligation of the owner after the date of the rejection, but the
 731 purchaser does not have a right or claim against other
 732 receivership property or the receiver on account of the damages.

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

735 (a) The tenant occupies the leased premises as the
 736 tenant's primary residence;

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

739 (c) The receiver was appointed at the request of a
 740 mortgagee and:

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

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

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

749 4. The terms of the lease were commercially reasonable at
 750 the time the lease was agreed to and the tenant did not know or

ENROLLED

CS/HB 783

2020 Legislature

751 | have reason to know that the lease violated the mortgage.
 752 | 714.18 Defenses and immunities of receiver.—
 753 | (1) A receiver is entitled to all defenses and immunities
 754 | provided by the laws of this state other than this chapter for
 755 | an act or omission within the scope of the receiver's
 756 | appointment.
 757 | (2) A receiver may be sued personally for an act or
 758 | omission in administering receivership property only with
 759 | approval of the court that appointed the receiver.
 760 | 714.19 Interim report of receiver.—A receiver may file or,
 761 | if ordered by the court, shall file an interim report that
 762 | includes:
 763 | (1) The activities of the receiver since appointment or a
 764 | previous report;
 765 | (2) Receipts and disbursements, including a payment made
 766 | or proposed to be made to a professional engaged by the
 767 | receiver;
 768 | (3) Receipts and dispositions of receivership property;
 769 | (4) Fees and expenses of the receiver and, if not filed
 770 | separately, a request for approval of payment of the fees and
 771 | expenses; and
 772 | (5) Any other information required by the court.
 773 | 714.20 Notice of appointment; claim against receivership;
 774 | distribution to creditors.—
 775 | (1) Except as otherwise provided in subsection (6), a

ENROLLED

CS/HB 783

2020 Legislature

776 receiver shall give notice of appointment of the receiver to
 777 creditors of the owner by:
 778 (a) Deposit for delivery through first-class mail or other
 779 commercially reasonable delivery method to the last known
 780 address of each creditor; and
 781 (b) Publication as directed by the court.
 782 (2) Except as otherwise provided in subsection (6), the
 783 notice required under subsection (1) must specify the date by
 784 which each creditor holding a claim against the owner which
 785 arose before appointment of the receiver must submit the claim
 786 to the receiver. The date specified must be at least 90 days
 787 after the later of notice under paragraph (1) (a) or last
 788 publication under paragraph (1) (b). The court may extend the
 789 period for submitting the claim. Unless the court orders
 790 otherwise, a claim that is not timely submitted is not entitled
 791 to a distribution from the receivership.
 792 (3) A claim submitted by a creditor under this section
 793 must:
 794 (a) State the name and address of the creditor;
 795 (b) State the amount and basis of the claim;
 796 (c) Identify any property securing the claim;
 797 (d) Be signed by the creditor under penalty of perjury;
 798 and
 799 (e) Include a copy of any record on which the claim is
 800 based.

ENROLLED

CS/HB 783

2020 Legislature

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

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

810 (6) If the court concludes that receivership property is
811 likely to be insufficient to satisfy claims of each creditor
812 holding a perfected lien on the property, the court may order
813 that:

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

817 (b) Unsecured creditors need not submit claims under this
818 section.

819 (7) Subject to s. 714.21:

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

824 (b) A distribution of receivership property to a creditor
825 with an allowed unsecured claim must be made as the court

ENROLLED

CS/HB 783

2020 Legislature

826 directs according to the laws of this state other than this
 827 chapter.

828 714.21 Fees and expenses.—

829 (1) The court may award a receiver from receivership
 830 property the reasonable and necessary fees and expenses of
 831 performing the duties of the receiver and exercising the powers
 832 of the receiver.

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

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

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

841 714.22 Removal of receiver; replacement; termination of
 842 receivership.—

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

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

846 (3) If the court finds that a receiver that resigns or is
 847 removed, or the representative of a receiver that is deceased,
 848 has accounted fully for and turned over to the successor
 849 receiver all receivership property and has filed a report of all
 850 receipts and disbursements during the service of the replaced

ENROLLED

CS/HB 783

2020 Legislature

851 receiver, the replaced receiver is discharged.

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

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

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

863 714.23 Final report of receiver; discharge.-

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

866 (a) A description of the activities of the receiver in the
 867 conduct of the receivership;

868 (b) A list of receivership property at the commencement of
 869 the receivership and any receivership property received during
 870 the receivership;

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

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

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

ENROLLED

CS/HB 783

2020 Legislature

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

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

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

882 714.24 Receivership in another state; ancillary
 883 proceeding.-

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

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

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

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

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

900 714.25 Effect of enforcement by mortgagee.-A request by a

ENROLLED

CS/HB 783

2020 Legislature

901 mortgagee for the appointment of a receiver, the appointment of
 902 a receiver, or the application by a mortgagee of receivership
 903 property or proceeds to the secured obligation does not:

904 (1) Make the mortgagee a mortgagee in possession of the
 905 real property;

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

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

909 (4) Make the secured obligation unenforceable;

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

912 (6) Constitute an action under chapter 702.

913 714.26 Uniformity of application and construction.—In
 914 applying and construing this chapter, consideration must be
 915 given to the need to promote uniformity of the law with respect
 916 to its subject matter among states that have enacted a similar
 917 law.

918 714.27 Relation to electronic signatures in global and
 919 national commerce act.—This act modifies, limits, or supersedes
 920 the Electronic Signatures in Global and National Commerce Act,
 921 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
 922 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
 923 authorize electronic delivery of any of the notices described in
 924 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

925 714.28 Transition.—This chapter does not apply to a

ENROLLED

CS/HB 783

2020 Legislature

926 | receivership for which the receiver was appointed before July 1,
927 | 2020.

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