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

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

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

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

84
85
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) An order appointing a receiver or providing for~~
239 ~~injunctive relief may not be entered unless a bond is given by~~
240 ~~the movant in an amount the court deems proper, conditioned for~~
241 ~~the payment of costs and damages sustained by the adverse party~~
242 ~~if the order is improperly entered. When any order appointing a~~
243 ~~receiver or providing for injunctive relief is issued on the~~
244 ~~pleading of a municipality or the state, or any officer, agency,~~
245 ~~or political subdivision thereof, the court may require or~~
246 ~~dispense with a bond, with or without surety, and conditioned in~~
247 ~~the same manner, having due regard for the public interest.~~

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

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

261 ~~(7)~~ (4) This chapter does not displace any existing rule

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

267 714.04 Scope; exclusions.—

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

272 (2) This chapter does not apply to:

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

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

277 (c) ~~Residential real~~Real property improved by one or two
278 dwelling units which includes the homestead of an individual
279 owner ~~which is occupied by the owner, the spouse~~or an affiliate
280 of ~~the owner, or a child or other dependent of the~~an individual
281 owner;

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

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

286 (3) This chapter does not limit the authority of a court to
287 appoint a receiver under the laws of this state other than this
288 chapter.

289 (4) This chapter does not limit an individual's homestead
290 ~~and exemption~~rights under the laws of this state or federal

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291 law.

292 (5) Unless displaced by a particular provision of this
293 chapter, the principles of law and equity, including the law
294 relative to capacity to contract, principal and agent, estoppel,
295 laches, fraud, misrepresentation, duress, coercion, mistake,
296 bankruptcy, or other validating or invalidating cause,
297 supplement this chapter.

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

302 714.06 Appointment of receiver.—

303 (1) The court may appoint a receiver:

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

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

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

312 (b) After judgment:

313 1. To carry the judgment into effect; or

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

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

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

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

328 (a) Appointment is necessary to protect the property from
329 waste, loss, substantial diminution in value, transfer,
330 dissipation, or impairment;

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

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

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

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

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

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

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349 court shall release the ~~security~~-bond or other security. When
350 any order appointing a receiver or providing for injunctive
351 relief is issued on the pleading of a municipality or the state,
352 or any officer, agency, or political subdivision thereof, the
353 court may require or dispense with a bond, with or without
354 surety, and conditioned in the same manner, having due regard
355 for the public interest.

356 (4) A party adversely affected by an order appointing
357 receiver may move to dissolve or modify the order at any time.
358 If a party moves to dissolve or modify the order, the motion
359 ~~shall~~ must be heard within 5 days after the movant applies for a.
360 hearing on the motion or at ~~, or~~ such time as the court
361 determines is reasonable and appropriate under the
362 circumstances, after the movant applies for a hearing on the
363 motion. ~~The court,~~ aAfter notice and a hearing, the Court may
364 grant relief for cause shown.

365 714.07 Disqualification from appointment as receiver;
366 disclosure of interest.-

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

370 (2) Except as otherwise provided in subsection (3), a
371 person is disqualified from appointment as receiver if the
372 person:

373 (a) Is an affiliate of a party;

374 (b) Has an interest materially adverse to an interest of a
375 party;

376 (c) Has a material financial interest in the outcome of the
377 action, other than compensation the court may allow the

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378 receiver;

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

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

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

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

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

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

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

395 714.08 Receiver's bond; alternative security.—

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

398 (a) Is conditioned on the faithful discharge of the
399 receiver's duties;

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

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

402 (d) Is effective as of the date of the receiver's
403 appointment.

404 (2) The court may approve the receiver posting an
405 alternative security with the court, such as a letter of credit
406 or deposit of funds. The receiver may not use receivership

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407 property as alternative security. Interest that accrues on
408 deposited funds must be paid to the receiver upon the receiver's
409 discharge.

410 (3) The court may authorize a receiver to act before the
411 receiver posts the bond or alternative security required by this
412 section if the action is necessary to prevent or mitigate
413 immediate injury, loss, or damage to the party who sought the
414 appointment of the receiver, or immediate waste, dissipation,
415 impairment, or substantial diminution in value to the
416 receivership property.

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

420 714.09 Status of receiver as lien creditor.—Upon
421 appointment of a receiver, the receiver has the status of a lien
422 creditor under:

423 (1) Chapter 679 as to receivership property or fixtures;
424 and

425 (2) Chapter 695 as to receivership property that is real
426 property.

427 714.10 Security agreement covering after-acquired
428 property.—Except as otherwise provided by law other than this
429 chapter, property that a receiver or an owner acquires after
430 appointment of the receiver is subject to a security agreement
431 entered into before the appointment to the same extent as if the
432 court had not appointed the receiver.

433 714.11 Collection and turnover of receivership property.—

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

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436 (a) A person that owes a debt that is receivership property
437 and is matured or payable on demand or on order shall pay the
438 debt to or on the order of the receiver, except to the extent
439 the debt is subject to setoff or recoupment; and

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

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

446 (3) If a creditor has possession, custody, or control of
447 receivership property and the validity, perfection, or priority
448 of the creditor's lien on the property depends on the creditor's
449 possession, custody, or control, the creditor may retain
450 possession, custody, or control until the court orders adequate
451 protection of the creditor's lien.

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

456 714.12 Powers and duties of receiver.-

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

459 (a) Collect, control, manage, conserve, and protect
460 receivership property;

461 (b) Operate a business constituting receivership property,
462 including preservation, use, sale, lease, license, exchange,
463 collection, or disposition of the property in the ordinary
464 course of business;

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

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

471 (e) Seek and obtain instruction from the court concerning
472 receivership property, exercise of the receiver's powers, and
473 performance of the receiver's duties;

474 (f) Upon subpoena, compel a person to submit to examination
475 under oath, or to produce and permit inspection and copying of
476 designated records or tangible things, with respect to
477 receivership property or any other matter that may affect
478 administration of the receivership;

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

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

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

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

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

488 (b) Make improvements to receivership property;

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

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

493 (e) Pay compensation to the receiver pursuant to s. 714.21,

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494 and to each professional engaged by the receiver under s.
495 714.15;

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

498 (g) Make a distribution of receivership property pursuant
499 to s. 714.20.

500 (3) A receiver shall:

501 (a) Prepare and retain appropriate business records,
502 including a record of each receipt, disbursement, and
503 disposition of receivership property;

504 (b) Account for receivership property, including the
505 proceeds of a sale, lease, license, exchange, collection, or
506 other disposition of the property;

507 (c) File with the recording office of the county in which
508 the real property is located a copy of the order appointing the
509 receiver and, if a legal description of the real property is not
510 included in the order, the legal description;

511 (d) Disclose to the court any fact arising during the
512 receivership which would disqualify the receiver under s.
513 714.07; and

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

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

518 714.13 Duties of owner.—

519 (1) An owner shall:

520 (a) Assist and cooperate with the receiver in the
521 administration of the receivership and the discharge of the
522 receiver's duties;

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

525 (c) Identify all records and other information relating to
526 the receivership property, including a password, authorization,
527 or other information needed to obtain or maintain access to or
528 control of the receivership property, and make available to the
529 receiver the records and information in the owner's possession,
530 custody, or control;

531 (d) Upon subpoena, submit to examination under oath by the
532 receiver concerning the acts, conduct, property, liabilities,
533 and financial condition of the owner or any matter relating to
534 the receivership property or the receivership; and

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

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

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

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

545 (b) Sanction the failure as civil contempt.

546 714.14 Stay; injunction.—

547 (1) Except as otherwise provided in subsection (54), after
548 notice and opportunity for a hearing, the court may enter an
549 order providing for a stay, applicable to all persons, of any
550 act, action, or proceeding:

551 (a) To obtain possession of, exercise control over, or

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552 enforce a judgment against all or a portion of the receivership
553 property as defined in the order creating the stay; and

554 (b) To enforce a lien against all or a portion of the
555 receivership property to the extent the lien secures a claim
556 against the owner which arose before entry of the order. The
557 court shall include in its order a specific description of the
558 receivership property subject to the stay, and shall include the
559 following language in the title of the order: "Order Staying
560 Certain Actions to Enforce Claims against Receivership
561 Property."

562 (2) Except as otherwise provided in subsection (54), the
563 court may enjoin an act, action, or proceeding against or
564 relating to receivership property if the injunction is necessary
565 to protect against misappropriation of, or waste relating
566 directly to, the receivership property.

567 (3) If the court grants injunctive relief, the injunction
568 must specify the reasons for entry, and must describe in
569 reasonable detail the act or acts restrained without reference
570 to a pleading or another document, and shall be. The injunction
571 is binding on the parties to the action; on the parties'
572 officers, agents, servants, employees, and attorneys; and on any
573 person who receives actual notice of the injunction and is in
574 active concert or participation with the parties ~~who receives~~
575 ~~actual notice of the injunction.~~

576 (4) A person whose act, action, or proceeding is stayed or
577 enjoined under this section, or who is otherwise adversely
578 affected by such stay or injunction, may apply to the court for
579 relief from the stay or injunction. If a person moves for such
580 relief, the motion shall ~~must~~ be heard within 5 days, ~~or~~ after

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581 the movant applies for a hearing on the motion or at such time
582 as the court determines is reasonable and appropriate under the
583 circumstances, after the movant applies for a hearing on the
584 motion. ~~The court, a~~After notice and a hearing ~~on notice~~, the
585 court may grant relief for cause shown.

586 ~~(4)~~ (5) An order under subsection (1) or subsection (2) does
587 not operate as a stay or injunction of:

588 (a) Any act, action, or proceeding to foreclose or
589 otherwise enforce a mortgage by the person seeking appointment
590 of the receiver;

591 (b) Any act, action, or proceeding to perfect, or maintain
592 or continue the perfection of, an interest in receivership
593 property;

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

595 (d) Commencement or continuation of an action or
596 proceeding, or enforcement of a judgment other than a money
597 judgment, in an action or proceeding by a governmental unit to
598 enforce its police or regulatory power; or

599 (e) Establishment by a governmental unit of a tax liability
600 against the receivership property or the owner of such
601 receivership property, or an appeal of any such liability.

602 ~~(56)~~ The court may void an act that violates a stay or
603 injunction under this section.

604 ~~(67)~~ The scope of the receivership property subject to the
605 stay under subsection (1) may be modified upon request of the
606 receiver or other person, after notice and opportunity for a
607 hearing ~~on notice~~.

608 ~~(78)~~ In connection with the entry of an order under
609 subsection (1) or subsection (2), the court shall determine

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610 whether an additional bond or alternative security will be
611 required as a condition to entry of the stay or injunction and,
612 if required, direct the party requesting the stay or injunction
613 to post a bond or alternative security as a condition for the
614 stay or injunction to become effective.

615 714.15 Engagement and compensation of professional.—

616 (1) With court approval, a receiver may engage an attorney,
617 an accountant, an appraiser, an auctioneer, a broker, or another
618 professional to assist the receiver in performing a duty or
619 exercising a power of the receiver. The receiver shall disclose
620 to the court:

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

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

623 (c) Any potential conflict of interest; and

624 (d) The proposed compensation.

625 (2) A person is not disqualified from engagement under this
626 section solely because of the person's engagement by,
627 representation of, or other relationship with the receiver, a
628 creditor, or a party. This chapter does not prevent the receiver
629 from serving in the receivership as an attorney, an accountant,
630 an auctioneer, or a broker when authorized by law.

631 (3) A receiver or professional engaged under subsection (1)
632 shall file with the court an itemized statement of the time
633 spent, work performed, and billing rate of each person that
634 performed the work and an itemized list of expenses. The
635 receiver shall pay the amount approved by the court.

636 714.16 Use or transfer of receivership property not in
637 ordinary course of business.—

638 (1) For the purposes of this section, the term "good faith"

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639 means honesty in fact and the observance of reasonable
640 commercial standards of fair dealing.

641 (2) Before judgment is entered with respect to the
642 receivership property in the action in which the receiver is
643 appointed, with court approval after notice to all parties with
644 an interest in the property, including all lienholders, and a
645 hearing, a receiver may use or transfer by sale, lease, license,
646 exchange, or other disposition receivership property other than
647 in the ordinary course of business only if the owner of the
648 property:

649 (a) After the commencement of the action in which the
650 receiver is appointed, expressly consents in writing to the
651 receiver's proposed use or transfer of the receivership
652 property, and the receiver notes the property owner's express
653 consent in the motion to approve the proposed use or transfer;
654 or

655 (b) Before or at the hearing on the receiver's motion to
656 approve the use or transfer of the receivership property, fails
657 to object thereto after the receiver in good faith has provided
658 reasonable advance written notice to the property owner of the
659 proposed use or transfer, and the receiver demonstrates in the
660 motion that the proposed use or transfer is necessary to prevent
661 waste, loss, substantial diminution in value, dissipation, or
662 impairment of the property or its revenue-producing potential or
663 to prevent a voidable transaction involving the property.

664
665 Service of notice to lienholders who are not parties to the
666 action must be made as provided in chapter 48 for service of
667 original process- or, in the case of a financial institution

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668 lienholder, as provided in s. 655.0201. If service cannot be
669 effectuated in such manner, upon authorization by court order,
670 the receiver may effect service of notice on the nonparty
671 lienholder pursuant to chapter 49 or as otherwise ordered by the
672 court.

673 (3) After judgment is entered against the property owner
674 and with court approval in the action in which the receiver is
675 appointed, a receiver may use or transfer receivership property
676 other than in the ordinary course of business to carry the
677 judgment into effect or to preserve nonexempt real property
678 pending appeal or when an execution has been returned
679 unsatisfied and the owner refuses to apply the property in
680 satisfaction of the judgment.

681 (4) The court may order that a transfer of receivership
682 property under this section is free and clear of any liens on
683 the property at the time of the transfer. In such case, any
684 liens on the property, which were valid at the time of the
685 transfer but extinguished by the transfer, attach to the
686 proceeds of the transfer with the same validity, perfection, and
687 priority the liens had on the property immediately before the
688 transfer, even if the proceeds are not sufficient to satisfy all
689 obligations secured by the liens.

690 (5) A transfer under subsection (3) may occur by means
691 other than a public auction sale. A creditor holding a valid
692 lien on the property to be transferred may purchase the property
693 and offset against the purchase price part or all of the allowed
694 amount secured by the lien if the creditor tenders funds
695 sufficient to satisfy in full the reasonable expenses of
696 transfer and the obligation secured by any senior lien

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697 extinguished by the transfer.

698 (6) A reversal or modification of an order approving a
699 transfer under subsection (3) does not affect the validity of
700 the transfer to a person that acquired the property in good
701 faith or revive against the person any lien extinguished by the
702 transfer, whether the person knew before the transfer of the
703 request for reversal or modification, unless the court stayed
704 the order before the transfer.

705 714.17 Executory contract.—

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

708 (2) Except as otherwise provided in subsection (8), with
709 court approval, a receiver may adopt or reject an executory
710 contract of the owner relating to receivership property. The
711 court may condition the receiver's adoption and continued
712 performance of the contract on terms appropriate under the
713 circumstances. If the receiver does not request court approval
714 to adopt or reject the contract within a reasonable time after
715 the receiver's appointment, the receiver is deemed to have
716 rejected the contract.

717 (3) A receiver's performance of an executory contract
718 before court approval under subsection (2) of its adoption or
719 rejection is not an adoption of the contract and does not
720 preclude the receiver from seeking approval to reject the
721 contract.

722 (4) A provision in an executory contract which requires or
723 permits a forfeiture, modification, or termination of the
724 contract because of the appointment of a receiver or the
725 financial condition of the owner does not affect a receiver's

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726 power under subsection (2) to adopt the contract.

727 (5) A receiver's right to possess or use receivership
728 property pursuant to an executory contract terminates on
729 rejection of the contract under subsection (2). Rejection is a
730 breach of the contract effective immediately before appointment
731 of the receiver. A claim for damages for rejection of the
732 contract must be submitted by the later of:

733 (a) The time set for submitting a claim in the
734 receivership; or

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

736 (6) If at the time a receiver is appointed, the owner has
737 the right to assign an executory contract relating to
738 receivership property under the laws of this state other than
739 this chapter, the receiver may assign the contract with court
740 approval.

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

745 (a) Treat the rejection as a termination of the contract,
746 and in that case the purchaser has a lien on the property for
747 the recovery of any part of the purchase price the purchaser
748 paid; or

749 (b) Retain the purchaser's right to possession under the
750 contract. If the purchaser retains his or her right to
751 possession pursuant to this paragraph, the purchaser must
752 continue to perform all obligations arising under the contract
753 and may offset any damages caused by nonperformance of an
754 obligation of the owner after the date of the rejection, but the

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755 purchaser does not have a right or claim against other
756 receivership property or the receiver on account of the damages.

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

759 (a) The tenant occupies the leased premises as the tenant's
760 primary residence;

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

763 (c) The receiver was appointed at the request of a
764 mortgagee and:

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

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

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

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

776 714.18 Defenses and immunities of receiver.-

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

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

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784 714.19 Interim report of receiver.—A receiver may file or,
785 if ordered by the court, shall file an interim report that
786 includes:

787 (1) The activities of the receiver since appointment or a
788 previous report;

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

791 (3) Receipts and dispositions of receivership property;

792 (4) Fees and expenses of the receiver and, if not filed
793 separately, a request for approval of payment of the fees and
794 expenses; and

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

796 714.20 Notice of appointment; claim against receivership;
797 distribution to creditors.—

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

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

804 (b) Publication as directed by the court.

805 (2) Except as otherwise provided in subsection (6), the
806 notice required under subsection (1) must specify the date by
807 which each creditor holding a claim against the owner which
808 arose before appointment of the receiver must submit the claim
809 to the receiver. The date specified must be at least 90 days
810 after the later of notice under paragraph (1)(a) or last
811 publication under paragraph (1)(b). The court may extend the
812 period for submitting the claim. Unless the court orders

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813 otherwise, a claim that is not timely submitted is not entitled
814 to a distribution from the receivership.

815 (3) A claim submitted by a creditor under this section
816 must:

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

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

819 (c) Identify any property securing the claim;

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

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

823 (4) An assignment by a creditor of a claim against the
824 owner is effective against the receiver only if the assignee
825 gives timely notice of the assignment to the receiver in a
826 signed record.

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

832 (6) If the court concludes that receivership property is
833 likely to be insufficient to satisfy claims of each creditor
834 holding a perfected lien on the property, the court may order
835 that:

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

839 (b) Unsecured creditors need not submit claims under this
840 section.

841 (7) Subject to s. 714.21:

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

846 (b) A distribution of receivership property to a creditor
847 with an allowed unsecured claim must be made as the court
848 directs according to the laws of this state other than this
849 chapter.

850 714.21 Fees and expenses.—

851 (1) The court may award a receiver from receivership
852 property the reasonable and necessary fees and expenses of
853 performing the duties of the receiver and exercising the powers
854 of the receiver.

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

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

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

863 714.22 Removal of receiver; replacement; termination of
864 receivership.—

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

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

868 (3) If the court finds that a receiver that resigns or is
869 removed, or the representative of a receiver that is deceased,
870 has accounted fully for and turned over to the successor

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871 receiver all receivership property and has filed a report of all
872 receipts and disbursements during the service of the replaced
873 receiver, the replaced receiver is discharged.

874 (4) The court may discharge a receiver and terminate the
875 court's administration of the receivership property if the court
876 finds that appointment of the receiver was improvident or that
877 the circumstances no longer warrant continuation of the
878 receivership. If the court finds that the appointment was sought
879 wrongfully or in bad faith, the court may assess against the
880 person that sought the appointment:

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

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

885 714.23 Final report of receiver; discharge.-

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

888 (a) A description of the activities of the receiver in the
889 conduct of the receivership;

890 (b) A list of receivership property at the commencement of
891 the receivership and any receivership property received during
892 the receivership;

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

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

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

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

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

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

904 714.24 Receivership in another state; ancillary
905 proceeding.-

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

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

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

916 (2) The court may issue an order that gives effect to an
917 order entered in another state appointing or directing a
918 receiver.

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

922 714.25 Effect of enforcement by mortgagee.-A request by a
923 mortgagee for the appointment of a receiver, the appointment of
924 a receiver, or the application by a mortgagee of receivership
925 property or proceeds to the secured obligation does not:

926 (1) Make the mortgagee a mortgagee in possession of the
927 real property;

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

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- 929 (3) Constitute an election of remedies which precludes a
930 later action to enforce the secured obligation;
931 (4) Make the secured obligation unenforceable;
932 (5) Limit any right available to the mortgagee with respect
933 to the secured obligation; or
934 (6) Constitute an action under chapter 702.

935 714.26 Uniformity of application and construction.—In
936 applying and construing this chapter, consideration must be
937 given to the need to promote uniformity of the law with respect
938 to its subject matter among states that have enacted a similar
939 law.

940 714.27 Relation to electronic signatures in global and
941 national commerce act.—This act modifies, limits, or supersedes
942 the Electronic Signatures in Global and National Commerce Act,
943 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
944 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
945 authorize electronic delivery of any of the notices described in
946 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

947 714.28 Transition.—This chapter does not apply to a
948 receivership for which the receiver was appointed before July 1,
949 2020.

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