

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4471

A bill to enact the uniform commercial real estate receivership act; to provide for the appointment of receivers to take possession of commercial real property of another and to receive, collect, care for, and dispose of the property or proceeds of the property; and to provide remedies related to the receiverships.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform commercial real estate receivership act".

3 Sec. 2. As used in this act:

4 (a) "Affiliate" means all of the following:

5 (i) With respect to an individual, any of the following:

6 (A) A companion of the individual.

7 (B) A lineal ancestor or descendant, whether by blood or

1 adoption, of either of the following:

2 (I) The individual.

3 (II) A companion of the individual.

4 (C) A companion of an ancestor or descendant described in sub-
5 subparagraph (B).

6 (D) A sibling, aunt, uncle, great aunt, great uncle, first
7 cousin, niece, nephew, grandniece, or grandnephew of the
8 individual, whether related by the whole or the half blood or
9 adoption, or a companion of any of them.

10 (E) Any other individual occupying the residence of the
11 individual.

12 (ii) With respect to a person other than an individual, any of
13 the following:

14 (A) Another person that directly or indirectly controls, is
15 controlled by, or is under common control with the person.

16 (B) An officer, director, manager, member, partner, employee,
17 or trustee or other fiduciary of the person.

18 (C) A companion of, or an individual occupying the residence
19 of, an individual described in sub-subparagraph (A) or (B).

20 (b) "Companion" means any of the following:

21 (i) The spouse of an individual.

22 (ii) The domestic partner of an individual.

23 (iii) Another individual in a civil union with an individual.

24 (c) "Court" means the circuit court.

25 (d) "Executory contract" means a contract, including a lease,
26 under which each party has an unperformed obligation and the
27 failure of a party to complete performance would constitute a

1 material breach.

2 (e) "Governmental unit" means an office, department, division,
3 bureau, board, commission, or other agency of this state or a
4 subdivision of this state.

5 (f) "Lien" means an interest in property that secures payment
6 or performance of an obligation.

7 (g) "Mortgage" means a record, however denominated, that
8 creates or provides for a consensual lien on real property or
9 rents, even if it also creates or provides for a lien on personal
10 property.

11 (h) "Mortgagee" means a person entitled to enforce an
12 obligation secured by a mortgage.

13 (i) "Mortgagor" means a person that grants a mortgage or a
14 successor in ownership of the real property described in the
15 mortgage.

16 (j) "Owner" means the person for whose property a receiver is
17 appointed.

18 (k) "Person" means an individual, estate, business or
19 nonprofit entity, public corporation, government or governmental
20 subdivision, agency, or instrumentality, or other legal entity.

21 (l) "Proceeds" means any of the following property:

22 (i) Whatever is acquired on the sale, lease, license,
23 exchange, or other disposition of receivership property.

24 (ii) Whatever is collected on, or distributed on account of,
25 receivership property.

26 (iii) Rights arising out of receivership property.

27 (iv) To the extent of the value of receivership property,

1 claims arising out of the loss, nonconformity, or interference with
2 the use of, defects or infringement of rights in, or damage to the
3 property.

4 (v) To the extent of the value of receivership property and to
5 the extent payable to the owner or mortgagee, insurance payable by
6 reason of the loss or nonconformity of, defects or infringement of
7 rights in, or damage to the property.

8 (m) "Property" means all of a person's right, title, and
9 interest, both legal and equitable, in real and personal property,
10 tangible and intangible, wherever located and however acquired. The
11 term includes proceeds, products, offspring, rents, or profits of
12 or from the property.

13 (n) "Receiver" means a person appointed by the court as the
14 court's agent, and subject to the court's direction, to take
15 possession of, manage, and, if authorized by this act or court
16 order, transfer, sell, lease, license, exchange, collect, or
17 otherwise dispose of receivership property.

18 (o) "Receivership" means a proceeding in which a receiver is
19 appointed.

20 (p) "Receivership property" means the property of an owner
21 that is described in the order appointing a receiver or a
22 subsequent order. The term includes any proceeds, products,
23 offspring, rents, or profits of or from the property.

24 (q) "Record", used as a noun, means information that is
25 inscribed on a tangible medium or that is stored on an electronic
26 or other medium and is retrievable in perceivable form.

27 (r) "Rents" means all of the following:

1 (i) Sums payable for the right to possess or occupy, or for
2 the actual possession or occupation of, real property of another
3 person.

4 (ii) Sums payable to a mortgagor under a policy of rental-
5 interruption insurance covering real property.

6 (iii) Claims arising out of a default in the payment of sums
7 payable for the right to possess or occupy real property of another
8 person.

9 (iv) Sums payable to terminate an agreement to possess or
10 occupy real property of another person.

11 (v) Sums payable to a mortgagor for payment or reimbursement
12 of expenses incurred in owning, operating, and maintaining real
13 property or constructing or installing improvements on real
14 property.

15 (vi) Other sums payable under an agreement relating to the
16 real property of another person that constitute rents under law of
17 this state other than this act.

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

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

22 (u) "Sign" means to do any of the following with present
23 intent to authenticate or adopt a record:

24 (i) Execute or adopt a tangible symbol.

25 (ii) Attach to or logically associate with the record an
26 electronic sound, symbol, or process.

27 (v) "State" means a state of the United States, the District

1 of Columbia, Puerto Rico, the United States Virgin Islands, or any
2 territory or insular possession subject to the jurisdiction of the
3 United States.

4 Sec. 3. (1) Except as otherwise provided in subsection (2),
5 the court may issue an order under this act only after notice and
6 opportunity for a hearing appropriate in the circumstances.

7 (2) The court may issue an order under this act under the
8 following circumstances:

9 (a) Without prior notice if the circumstances require issuance
10 of an order before notice is given.

11 (b) After notice and without a prior hearing if the
12 circumstances require issuance of an order before a hearing is
13 held.

14 (c) After notice and without a hearing if no interested party
15 timely requests a hearing.

16 Sec. 4. (1) Except as otherwise provided in subsection (2) or
17 (3), this act applies to a receivership for an interest in real
18 property and any personal property related to or used in operating
19 the real property.

20 (2) This act does not apply to a receivership for an interest
21 in real property improved by 1 to 4 dwelling units unless 1 or more
22 of the following applies:

23 (a) The interest is used for agricultural, commercial,
24 industrial, or mineral-extraction purposes, other than incidental
25 uses by an owner occupying the property as the owner's primary
26 residence.

27 (b) The interest secures an obligation incurred at a time when

1 the property was used or planned for use for agricultural,
2 commercial, industrial, or mineral-extraction purposes.

3 (c) The owner planned or is planning to develop the property
4 into 1 or more dwelling units to be sold or leased in the ordinary
5 course of the owner's business.

6 (d) The owner is collecting or has the right to collect rents
7 or other income from the property from a person other than an
8 affiliate of the owner.

9 (3) This act does not apply to a receivership authorized by
10 law of this state other than this act in which the receiver is a
11 governmental unit or an individual acting in an official capacity
12 on behalf of the unit except to the extent provided by the other
13 law.

14 (4) This act does not limit the authority of a court to
15 appoint a receiver under law of this state other than this act.

16 (5) Unless displaced by a particular provision of this act,
17 the principles of law and equity supplement this act.

18 Sec. 5. (1) The procedure for the selection, appointment,
19 removal, and compensation of a receiver under this act is as
20 established by rule of the supreme court.

21 (2) The court that appoints a receiver under this act has
22 exclusive jurisdiction to direct the receiver and determine any
23 controversy related to the receivership or receivership property.

24 Sec. 6. (1) The court may appoint a receiver as follows:

25 (a) Before judgment, to protect a party that demonstrates an
26 apparent right, title, or interest in real property that is the
27 subject of the action, under either of the following circumstances:

1 (i) The property or its revenue-producing potential is being
2 subjected to or is in danger of waste, loss, dissipation, or
3 impairment.

4 (ii) The property or its revenue-producing potential has been
5 or is about to be the subject of a voidable transaction.

6 (b) After judgment for any of the following reasons:

7 (i) To carry the judgment into effect.

8 (ii) To preserve nonexempt real property pending appeal or
9 when an execution has been returned unsatisfied and the owner
10 refuses to apply the property in satisfaction of the judgment.

11 (c) In an action in which a receiver for real property may be
12 appointed on equitable grounds.

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

16 (2) In connection with the foreclosure or other enforcement of
17 a mortgage, the court may appoint a receiver for the mortgaged
18 property under any of the following circumstances:

19 (a) Appointment is necessary to protect the property from
20 waste, loss, transfer, dissipation, or impairment.

21 (b) The mortgagor agreed in a signed record to appointment of
22 a receiver on default.

23 (c) The owner agreed, after default and in a signed record, to
24 appointment of a receiver.

25 (d) The property and any other collateral held by the
26 mortgagee are not sufficient to satisfy the secured obligation.

27 (e) The owner fails to turn over to the mortgagee proceeds or

1 rents the mortgagee was entitled to collect.

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

4 (3) The court may condition appointment of a receiver without
5 prior notice under section 3(2)(a) or without a prior hearing under
6 section 3(2)(b) on the giving of security by the person seeking the
7 appointment for the payment of damages, reasonable attorney fees,
8 and costs incurred or suffered by any person if the court later
9 concludes that the appointment was not justified. If the court
10 later concludes that the appointment was justified, the court shall
11 release the security.

12 Sec. 7. (1) The court may not appoint a person as receiver
13 unless the person submits to the court a statement under penalty of
14 perjury that the person is not disqualified.

15 (2) Except as otherwise provided in subsection (3), a person
16 is disqualified from appointment as receiver if 1 or more of the
17 following apply:

18 (a) The person is an affiliate of a party.

19 (b) The person has an interest materially adverse to an
20 interest of a party.

21 (c) The person has a material financial interest in the
22 outcome of the action, other than compensation the court may allow
23 the receiver.

24 (d) The person has a debtor-creditor relationship with a
25 party.

26 (e) The person holds an equity interest in a party, other than
27 a noncontrolling interest in a publicly traded company.

1 (3) A person is not disqualified from appointment as receiver
2 solely because 1 or more of the following apply:

3 (a) The person was appointed receiver or is owed compensation
4 in an unrelated matter involving a party or was engaged by a party
5 in a matter unrelated to the receivership.

6 (b) The person is an individual obligated to a party on a debt
7 that is not in default and was incurred primarily for personal,
8 family, or household purposes.

9 (c) The person maintains with a party a deposit account as
10 defined in section 9102 of the uniform commercial code, 1962 PA
11 174, MCL 440.9102.

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

15 Sec. 8. (1) Except as otherwise provided in subsection (2), a
16 receiver shall post with the court a bond that meets all of the
17 following requirements:

18 (a) The bond is conditioned on the faithful discharge of the
19 receiver's duties.

20 (b) The bond has 1 or more sureties approved by the court.

21 (c) The bond is in an amount the court specifies.

22 (d) The bond is effective as of the date of the receiver's
23 appointment.

24 (2) The court may approve the posting by a receiver with the
25 court of alternative security, such as a letter of credit or
26 deposit of funds. The receiver may not use receivership property as
27 alternative security. Interest that accrues on deposited funds must

1 be paid to the receiver on the receiver's discharge.

2 (3) The court may authorize a receiver to act before the
3 receiver posts the bond or alternative security required by this
4 section.

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

8 Sec. 9. On appointment of a receiver, the receiver has the
9 status of a lien creditor under both of the following:

10 (a) Article 9 of the uniform commercial code, 1962 PA 174, MCL
11 440.9101 to 440.9809, as to receivership property that is personal
12 property or fixtures.

13 (b) The recording statutes of this state as to receivership
14 property that is real property.

15 Sec. 10. Except as otherwise provided by law of this state
16 other than this act, property that a receiver or owner acquires
17 after appointment of the receiver is subject to a security
18 agreement entered into before the appointment to the same extent as
19 if the court had not appointed the receiver.

20 Sec. 11. (1) Unless the court orders otherwise, a person shall
21 do both of the following on demand by a receiver, as applicable:

22 (a) If the person owes a debt that is receivership property
23 and is matured or payable on demand or on order, pay the debt to or
24 on the order of the receiver, except to the extent the debt is
25 subject to setoff or recoupment.

26 (b) Subject to subsection (3), if the person has possession,
27 custody, or control of receivership property, turn the property

1 over to the receiver.

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

5 (3) If a creditor has possession, custody, or control of
6 receivership property and the validity, perfection, or priority of
7 the creditor's lien on the property depends on the creditor's
8 possession, custody, or control, the creditor may retain
9 possession, custody, or control until the court orders adequate
10 protection of the creditor's lien.

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

15 Sec. 12. (1) Except as limited by court order or law of this
16 state other than this act, a receiver may do all of the following:

17 (a) Collect, control, manage, conserve, and protect
18 receivership property.

19 (b) Operate a business constituting receivership property,
20 including preservation, use, sale, lease, license, exchange,
21 collection, or disposition of the property in the ordinary course
22 of business.

23 (c) In the ordinary course of business, incur unsecured debt
24 and pay expenses incidental to the receiver's preservation, use,
25 sale, lease, license, exchange, collection, or disposition of
26 receivership property.

27 (d) Assert a right, claim, cause of action, or defense of the

1 owner that relates to receivership property.

2 (e) Seek and obtain instruction from the court concerning
3 receivership property, exercise of the receiver's powers, and
4 performance of the receiver's duties.

5 (f) On subpoena, compel a person to submit to examination
6 under oath, or to produce and permit inspection and copying of
7 designated records or tangible things, with respect to receivership
8 property or any other matter that may affect administration of the
9 receivership.

10 (g) Engage a professional as provided in section 15.

11 (h) Apply to a court of another state for appointment as
12 ancillary receiver with respect to receivership property located in
13 that state.

14 (i) Exercise any power conferred by court order, this act, or
15 law of this state other than this act.

16 (2) With court approval, a receiver may do any of the
17 following:

18 (a) Incur debt for the use or benefit of receivership property
19 other than in the ordinary course of business.

20 (b) Make improvements to receivership property.

21 (c) Use or transfer receivership property other than in the
22 ordinary course of business as provided in section 16.

23 (d) Adopt or reject an executory contract of the owner as
24 provided in section 17.

25 (e) Pay compensation to the receiver as provided in section
26 21, and to each professional engaged by the receiver as provided in
27 section 15.

1 (f) Recommend allowance or disallowance of a claim of a
2 creditor as provided in section 20.

3 (g) Make a distribution of receivership property as provided
4 in section 20.

5 (3) A receiver shall do all of the following:

6 (a) Prepare and retain appropriate business records, including
7 a record of each receipt, disbursement, and disposition of
8 receivership property.

9 (b) Account for receivership property, including the proceeds
10 of a sale, lease, license, exchange, collection, or other
11 disposition of the property.

12 (c) File with the appropriate real property recording office a
13 copy of the order appointing the receiver and, if a legal
14 description of the real property is not included in the order, the
15 legal description.

16 (d) Disclose to the court any fact arising during the
17 receivership that would disqualify the receiver under section 7.

18 (e) Perform any duty imposed by court order, this act, or law
19 of this state other than this act.

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

22 Sec. 13. (1) An owner shall do all of the following:

23 (a) Assist and cooperate with the receiver in the
24 administration of the receivership and the discharge of the
25 receiver's duties.

26 (b) Preserve and turn over to the receiver all receivership
27 property in the owner's possession, custody, or control.

1 (c) Identify all records and other information relating to the
2 receivership property, including a password, authorization, or
3 other information needed to obtain or maintain access to or control
4 of the receivership property, and make available to the receiver
5 the records and information in the owner's possession, custody, or
6 control.

7 (d) On subpoena, submit to examination under oath by the
8 receiver concerning the acts, conduct, property, liabilities, and
9 financial condition of the owner or any matter relating to the
10 receivership property or the receivership.

11 (e) Perform any duty imposed by court order, this act, or law
12 of this state other than this act.

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

17 (3) If a person knowingly fails to perform a duty imposed by
18 this section, the court may do 1 or both of the following:

19 (a) Award the receiver actual damages caused by the person's
20 failure, reasonable attorney fees, and costs.

21 (b) Sanction the failure as civil contempt.

22 Sec. 14. (1) Except as otherwise provided in subsection (4) or
23 ordered by the court, an order appointing a receiver operates as a
24 stay, applicable to all persons, of an act, action, or proceeding
25 to do any of the following:

26 (a) Obtain possession of, exercise control over, or enforce a
27 judgment against receivership property.

1 (b) Enforce a lien against receivership property to the extent
2 the lien secures a claim against the owner that arose before entry
3 of the order.

4 (2) Except as otherwise provided in subsection (4), the court
5 may enjoin an act, action, or proceeding against or relating to
6 receivership property if the injunction is necessary to protect the
7 property or facilitate administration of the receivership.

8 (3) A person whose act, action, or proceeding is stayed or
9 enjoined under this section may apply to the court for relief from
10 the stay or injunction for cause.

11 (4) An order under subsection (1) or (2) does not operate as a
12 stay or injunction of any of the following:

13 (a) An act, action, or proceeding to foreclose or otherwise
14 enforce a mortgage by the person seeking appointment of the
15 receiver.

16 (b) An act, action, or proceeding to perfect, or maintain or
17 continue the perfection of, an interest in receivership property.

18 (c) Commencement or continuation of a criminal proceeding.

19 (d) Commencement or continuation of an action or proceeding,
20 or enforcement of a judgment other than a money judgment in an
21 action or proceeding, by a governmental unit to enforce its police
22 or regulatory power.

23 (e) Establishment by a governmental unit of a tax liability
24 against the owner or receivership property or an appeal of the
25 liability.

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

1 (6) If a person knowingly violates a stay or injunction under
2 this section, the court may do 1 or both of the following:

3 (a) Award actual damages caused by the violation, reasonable
4 attorney fees, and costs.

5 (b) Sanction the violation as civil contempt.

6 Sec. 15. (1) With court approval, a receiver may engage an
7 attorney, accountant, appraiser, auctioneer, broker, or other
8 professional to assist the receiver in performing a duty or
9 exercising a power of the receiver. The receiver shall disclose all
10 of the following to the court:

11 (a) The identity and qualifications of the professional.

12 (b) The scope and nature of the proposed engagement.

13 (c) Any potential conflict of interest.

14 (d) The proposed compensation.

15 (2) A person is not disqualified from engagement under this
16 section solely because of the person's engagement by,
17 representation of, or other relationship with the receiver, a
18 creditor, or a party. This act does not prevent the receiver from
19 serving in the receivership as an attorney, accountant, auctioneer,
20 or broker when authorized by law.

21 (3) A receiver or professional engaged under subsection (1)
22 shall file with the court an itemized statement of the time spent,
23 work performed, and billing rate of each person that performed the
24 work and an itemized list of expenses. The receiver shall pay the
25 amount approved by the court.

26 Sec. 16. (1) As used in this section, "good faith" means
27 honesty in fact and the observance of reasonable commercial

1 standards of fair dealing.

2 (2) With court approval, a receiver may use receivership
3 property other than in the ordinary course of business.

4 (3) With court approval, a receiver may transfer receivership
5 property other than in the ordinary course of business by sale,
6 lease, license, exchange, or other disposition. Unless the
7 agreement of sale provides otherwise, a sale under this section is
8 free and clear of a lien of the person that obtained appointment of
9 the receiver, any subordinate lien, and any right of redemption but
10 is subject to a senior lien.

11 (4) A lien on receivership property that is extinguished by a
12 transfer under subsection (3) attaches to the proceeds of the
13 transfer with the same validity, perfection, and priority the lien
14 had on the property immediately before the transfer, even if the
15 proceeds are not sufficient to satisfy all obligations secured by
16 the lien.

17 (5) A transfer under subsection (3) may occur by means other
18 than a public auction sale. A creditor holding a valid lien on the
19 property to be transferred may purchase the property and offset
20 against the purchase price part or all of the allowed amount
21 secured by the lien, if the creditor tenders funds sufficient to
22 satisfy in full the reasonable expenses of transfer and the
23 obligation secured by any senior lien extinguished by the transfer.

24 (6) A reversal or modification of an order approving a
25 transfer under subsection (3) does not affect the validity of the
26 transfer to a person that acquired the property in good faith or
27 revive against the person any lien extinguished by the transfer,

1 whether the person knew before the transfer of the request for
2 reversal or modification, unless the court stayed the order before
3 the transfer.

4 Sec. 17. (1) As used in this section, "timeshare interest"
5 means either of the following, as applicable:

6 (a) Unless subdivision (b) applies, an interest having a
7 duration of more than 3 years that grants its holder the right to
8 use and occupy an accommodation, facility, or recreational site,
9 whether improved or not, for a specific period less than a full
10 year during any given year.

11 (b) If the condominium act, 1978 PA 59, MCL 559.101 to
12 559.276, applies, a time-share estate or a time-share license, as
13 those terms are defined in section 10 of the condominium act, 1978
14 PA 59, MCL 559.110.

15 (2) Except as otherwise provided in subsection (8), with court
16 approval, a receiver may adopt or reject an executory contract of
17 the owner relating to receivership property. The court may
18 condition the receiver's adoption and continued performance of the
19 contract on terms appropriate under the circumstances. If the
20 receiver does not request court approval to adopt or reject the
21 contract within a reasonable time after the receiver's appointment,
22 the receiver is deemed to have rejected the contract.

23 (3) A receiver's performance of an executory contract before
24 court approval under subsection (2) of its adoption or rejection is
25 not an adoption of the contract and does not preclude the receiver
26 from seeking approval to reject the contract.

27 (4) A provision in an executory contract that requires or

1 permits a forfeiture, modification, or termination of the contract
2 because of the appointment of a receiver or the financial condition
3 of the owner does not affect a receiver's power under subsection
4 (2) to adopt the contract.

5 (5) A receiver's right to possess or use receivership property
6 pursuant to an executory contract terminates on rejection of the
7 contract under subsection (2). Rejection is a breach of the
8 contract effective immediately before appointment of the receiver.
9 A claim for damages for rejection of the contract must be submitted
10 by the later of the following:

11 (a) The time set for submitting a claim in the receivership.

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

13 (6) If, at the time a receiver is appointed, the owner has the
14 right to assign an executory contract relating to receivership
15 property under law of this state other than this act, the receiver
16 may assign the contract with court approval.

17 (7) If a receiver rejects under subsection (2) an executory
18 contract for the sale of receivership property that is real
19 property in possession of the purchaser or a real-property
20 timeshare interest, the purchaser may do either of the following:

21 (a) Treat the rejection as a termination of the contract, and
22 in that case the purchaser has a lien on the property for the
23 recovery of any part of the purchase price the purchaser paid.

24 (b) Retain the purchaser's right to possession under the
25 contract, and in that case the purchaser shall continue to perform
26 all obligations arising under the contract and may offset any
27 damages caused by nonperformance of an obligation of the owner

1 after the date of the rejection, but the purchaser has no right or
2 claim against other receivership property or the receiver on
3 account of the damages.

4 (8) A receiver may not reject an unexpired lease of real
5 property under which the owner is the landlord if 1 or more of the
6 following apply:

7 (a) The tenant occupies the leased premises as the tenant's
8 primary residence.

9 (b) The receiver was appointed at the request of a person
10 other than a mortgagee.

11 (c) The receiver was appointed at the request of a mortgagee
12 and 1 or more of the following apply:

13 (i) The lease is superior to the lien of the mortgage.

14 (ii) The tenant has an enforceable agreement with the
15 mortgagee or the holder of a senior lien under which the tenant's
16 occupancy will not be disturbed as long as the tenant performs its
17 obligations under the lease.

18 (iii) The mortgagee has consented to the lease, either in a
19 signed record or by its failure timely to object that the lease
20 violated the mortgage.

21 (iv) The terms of the lease were commercially reasonable at
22 the time the lease was agreed to and the tenant did not know or
23 have reason to know that the lease violated the mortgage.

24 Sec. 18. (1) A receiver is entitled to all defenses and
25 immunities provided by law of this state other than this act for an
26 act or omission within the scope of the receiver's appointment.

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

1 in administering receivership property only with approval of the
2 court that appointed the receiver.

3 Sec. 19. A receiver may file or, if ordered by the court,
4 shall file an interim report that includes all of the following:

5 (a) The activities of the receiver since appointment or a
6 previous report.

7 (b) Receipts and disbursements, including a payment made or
8 proposed to be made to a professional engaged by the receiver.

9 (c) Receipts and dispositions of receivership property.

10 (d) Fees and expenses of the receiver and, if not filed
11 separately, a request for approval of payment of the fees and
12 expenses.

13 (e) Any other information required by the court.

14 Sec. 20. (1) Except as otherwise provided in subsection (6), a
15 receiver shall give notice of appointment of the receiver to
16 creditors of the owner by both of the following:

17 (a) Deposit for delivery through first-class mail or other
18 commercially reasonable delivery method to the last known address
19 of each creditor.

20 (b) Publication as directed by the court.

21 (2) Except as otherwise provided in subsection (6), the notice
22 required by subsection (1) must specify the date by which each
23 creditor holding a claim against the owner that arose before
24 appointment of the receiver must submit the claim to the receiver.
25 The date specified must be at least 90 days after the later of
26 notice under subsection (1)(a) or last publication under subsection
27 (1)(b). The court may extend the period for submitting the claim.

1 Unless the court orders otherwise, a claim that is not submitted
2 timely is not entitled to a distribution from the receivership.

3 (3) A claim submitted by a creditor under this section must
4 satisfy all of the following requirements:

5 (a) The claim must state the name and address of the creditor.

6 (b) The claim must state the amount and basis of the claim.

7 (c) The claim must identify any property securing the claim.

8 (d) The claim must be signed by the creditor under penalty of
9 perjury.

10 (e) The claim must include a copy of any record on which the
11 claim is based.

12 (4) An assignment by a creditor of a claim against the owner
13 is effective against the receiver only if the assignee gives timely
14 notice of the assignment to the receiver in a signed record.

15 (5) At any time before entry of an order approving a
16 receiver's final report, the receiver may file with the court an
17 objection to a claim of a creditor, stating the basis for the
18 objection. The court shall allow or disallow the claim according to
19 law of this state other than this act.

20 (6) If the court concludes that receivership property is
21 likely to be insufficient to satisfy claims of each creditor
22 holding a perfected lien on the property, the court may order both
23 of the following:

24 (a) That the receiver need not give notice under subsection
25 (1) of the appointment to all creditors of the owner, but only such
26 creditors as the court directs.

27 (b) That unsecured creditors need not submit claims under this

1 section.

2 (7) Subject to section 21, both of the following apply to a
3 distribution of receivership property:

4 (a) If the distribution is to a creditor holding a perfected
5 lien on the property, the distribution must be made in accordance
6 with the creditor's priority under law of this state other than
7 this act.

8 (b) If the distribution is to a creditor with an allowed
9 unsecured claim, the distribution must be made as the court directs
10 according to law of this state other than this act.

11 Sec. 21. (1) The court may award a receiver from receivership
12 property the reasonable and necessary fees and expenses of
13 performing the duties of the receiver and exercising the powers of
14 the receiver.

15 (2) The court may order 1 or more of the following to pay the
16 reasonable and necessary fees and expenses of the receivership,
17 including reasonable attorney fees and costs:

18 (a) A person that requested the appointment of the receiver,
19 if the receivership does not produce sufficient funds to pay the
20 fees and expenses.

21 (b) A person whose conduct justified or would have justified
22 the appointment of the receiver under section 6(1)(a).

23 Sec. 22. (1) The court may remove a receiver for cause.

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

26 (3) If the court finds that a receiver that resigns or is
27 removed, or the representative of a receiver that is deceased, has

1 accounted fully for and turned over to the successor receiver all
2 receivership property and has filed a report of all receipts and
3 disbursements during the service of the replaced receiver, the
4 replaced receiver is discharged.

5 (4) The court may discharge a receiver and terminate the
6 court's administration of the receivership property if the court
7 finds that appointment of the receiver was improvident or that the
8 circumstances no longer warrant continuation of the receivership.
9 If the court finds that the appointment was sought wrongfully or in
10 bad faith, the court may assess both of the following against the
11 person that sought the appointment:

12 (a) The fees and expenses of the receivership, including
13 reasonable attorney fees and costs.

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

16 Sec. 23. (1) On completion of a receiver's duties, the
17 receiver shall file a final report including all of the following:

18 (a) A description of the activities of the receiver in the
19 conduct of the receivership.

20 (b) A list of receivership property at the commencement of the
21 receivership and any receivership property received during the
22 receivership.

23 (c) A list of disbursements, including payments to
24 professionals engaged by the receiver.

25 (d) A list of dispositions of receivership property.

26 (e) A list of distributions made or proposed to be made from
27 the receivership for creditor claims.

1 (f) If not filed separately, a request for approval of the
2 payment of fees and expenses of the receiver.

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

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

7 Sec. 24. (1) The court may appoint a receiver appointed in
8 another state, or that person's nominee, as an ancillary receiver
9 with respect to property located in this state or subject to the
10 jurisdiction of the court for which a receiver could be appointed
11 under this act, if both of the following apply:

12 (a) The person or nominee would be eligible to serve as
13 receiver under section 7.

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

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

19 (3) Unless the court orders otherwise, an ancillary receiver
20 appointed under subsection (1) has the rights, powers, and duties
21 of a receiver appointed under this act.

22 Sec. 25. A request by a mortgagee for appointment of a
23 receiver, the appointment of a receiver, or application by a
24 mortgagee of receivership property or proceeds to the secured
25 obligation does not do any of the following:

26 (a) Make the mortgagee a mortgagee in possession of the real
27 property.

1 (b) Make the mortgagee an agent of the owner.

2 (c) Constitute an election of remedies that precludes a later
3 action to enforce the secured obligation.

4 (d) Make the secured obligation unenforceable.

5 (e) Limit any right available to the mortgagee with respect to
6 the secured obligation.

7 (f) Constitute an action within the meaning of section
8 3204(1)(b) of the revised judicature act of 1961, 1961 PA 236, MCL
9 600.3204.

10 Sec. 26. In applying and construing this uniform act,
11 consideration must be given to the need to promote uniformity of
12 the law with respect to its subject matter among states that enact
13 it.

14 Sec. 27. This act modifies, limits, or supersedes the
15 electronic signatures in global and national commerce act, 15 USC
16 7001 to 7031, but does not modify, limit, or supersede 15 USC
17 7001(c) or authorize electronic delivery of any of the notices
18 described in 15 USC 7003(b).

19 Sec. 28. This act does not apply to a receivership for which
20 the receiver was appointed before the effective date of this act.

21 Sec. 30. This act takes effect 90 days after the date it is
22 enacted into law.

23 Enacting section 1. This act does not take effect unless House
24 Bill No. 4470 of the 99th Legislature is enacted into law.