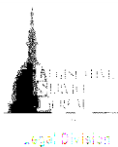


**SUBSTITUTE FOR
HOUSE BILL NO. 5336**

A bill to amend 2018 PA 16, entitled
"Uniform commercial real estate receivership act,"
by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 11, 12,
13, 14, 15, 16, 18, 19, 20, 21, and 25 (MCL 554.1011, 554.1012,
554.1013, 554.1014, 554.1015, 554.1016, 554.1017, 554.1018,
554.1021, 554.1022, 554.1023, 554.1024, 554.1025, 554.1026,
554.1028, 554.1029, 554.1030, 554.1031, and 554.1035).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to enact the ~~uniform commercial real estate~~
3 receivership act; to provide for the appointment of receivers to
4 take possession of ~~commercial real~~ property of another and to
5 receive, collect, care for, and dispose of the property or proceeds



1 of the property; and to provide remedies related to the
2 receiverships.

3 Sec. 1. This act shall be known and may be cited as the
4 ~~"uniform commercial real estate receivership"~~ **"receivership"** act".

5 Sec. 2. As used in this act:

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

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

8 (A) A companion of the individual.

9 (B) A lineal ancestor or descendant, whether by blood or
10 adoption, of either of the following:

11 (I) The individual.

12 (II) A companion of the individual.

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

15 (D) A sibling, aunt, uncle, great aunt, great uncle, first
16 cousin, niece, nephew, grandniece, or grandnephew of the
17 individual, whether related by the whole or the half blood or
18 adoption, or a companion of any of them.

19 (E) Any other individual occupying the residence of the
20 individual.

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

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

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

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

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



1 (i) The spouse of an individual.

2 (ii) The domestic partner of an individual.

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

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

5 (d) **"Court rules" means the rules adopted by the supreme court**
6 **under section 5 of article VI of the state constitution of 1963,**
7 **including the most recent amendments.**

8 (e) ~~(d)~~—"Executory contract" means a contract, including a
9 lease, under which each party has an unperformed obligation and the
10 failure of a party to complete performance would constitute a
11 material breach.

12 (f) ~~(e)~~—"Governmental unit" means an office, department,
13 division, bureau, board, commission, or other agency of this state
14 or a subdivision of this state.

15 (g) ~~(f)~~—"Lien" means an interest in property that secures
16 payment or performance of an obligation.

17 (h) ~~(g)~~—"Mortgage" means a record, however denominated, that
18 creates or provides for a consensual lien on real property or
19 rents, even if it also creates or provides for a lien on personal
20 property.

21 (i) ~~(h)~~—"Mortgagee" means a person entitled to enforce an
22 obligation secured by a mortgage.

23 (j) ~~(i)~~—"Mortgagor" means a person that grants a mortgage or a
24 successor in ownership of the real property described in the
25 mortgage.

26 (k) ~~(j)~~—"Owner" means the person for whose property a receiver
27 is appointed.

28 (l) ~~(k)~~—"Person" means an individual, estate, business or
29 nonprofit entity, public corporation, government or governmental



1 subdivision, agency, or instrumentality, or other legal entity.

2 (m) ~~(l)~~—"Proceeds" means any of the following property:

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

5 (ii) Whatever is collected on, or distributed on account of,
6 receivership property.

7 (iii) Rights arising out of receivership property.

8 (iv) To the extent of the value of receivership property,
9 claims arising out of the loss, nonconformity, or interference with
10 the use of, defects or infringement of rights in, or damage to the
11 property.

12 (v) To the extent of the value of receivership property and to
13 the extent payable to the owner or mortgagee, insurance payable by
14 reason of the loss or nonconformity of, defects or infringement of
15 rights in, or damage to the property.

16 (n) ~~(m)~~—"Property" means all of a person's right, title, and
17 interest, both legal and equitable, in real ~~and~~ **property**, personal
18 property, **and fixtures** tangible and intangible, wherever located
19 and however acquired. The term includes proceeds, products,
20 offspring, rents, or profits of or from the property.

21 (o) ~~(n)~~—"Receiver" means a person appointed by the court as
22 the court's agent, and subject to the court's direction, to take
23 possession of, manage, and, if authorized by this act or court
24 order, transfer, sell, lease, license, exchange, collect, or
25 otherwise dispose of receivership property.

26 (p) ~~(o)~~—"Receivership" means a proceeding in which a receiver
27 is appointed.

28 (q) ~~(p)~~—"Receivership property" means the property of an owner
29 that is described in the order appointing a receiver or a



1 subsequent order. The term includes any proceeds, products,
2 offspring, rents, or profits of or from the property.

3 **(r)** ~~(q)~~—"Record", used as a noun, means information that is
4 inscribed on a tangible medium or that is stored on an electronic
5 or other medium and is retrievable in perceivable form.

6 **(s)** ~~(r)~~—"Rents" means all of the following:

7 (i) Sums payable for the right to possess or occupy, or for the
8 actual possession or occupation of, real **or personal** property of
9 another person.

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

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

15 (iv) Sums payable to terminate an agreement to possess or
16 occupy real **or personal** property of another person.

17 (v) Sums payable to a mortgagor for payment or reimbursement
18 of expenses incurred in owning, operating, and maintaining real
19 property or constructing or installing improvements on real
20 property.

21 (vi) Other sums payable under an agreement relating to the real
22 **or personal** property of another person that constitute rents under
23 law of this state other than this act.

24 **(t)** ~~(s)~~—"Secured obligation" means an obligation the payment
25 or performance of which is secured by a security agreement.

26 **(u)** "Secured party" means a person entitled to enforce a
27 secured obligation or lien.

28 **(v)** ~~(t)~~—"Security agreement" means an agreement that creates
29 or provides for a lien, **including a mortgage.**



1 **(w)** ~~(u)~~ "Sign" means to do any of the following with present
 2 intent to authenticate or adopt a record:

3 (i) Execute or adopt a tangible symbol.

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

6 **(x)** ~~(v)~~ "State" means a state of the United States, the
 7 District of Columbia, Puerto Rico, the United States Virgin
 8 Islands, or any territory or insular possession subject to the
 9 jurisdiction of the United States.

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

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

15 (a) Without prior notice if ~~the circumstances~~ **cause exists to**
 16 require issuance of an order before notice is given.

17 (b) After notice and without a prior hearing if ~~the~~
 18 ~~circumstances~~ **cause exists to** require issuance of an order before a
 19 hearing is held.

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

22 Sec. 4. (1) Except as otherwise provided in subsection (2) or
 23 (3), this act applies to a receivership for an interest in ~~real~~ **any**
 24 **of the following:**

25 **(a) Real property, fixtures, and any personal property related**
 26 **to or used in operating the real property.**

27 **(b) Personal property.**

28 (2) This act does not apply to a receivership for an interest
 29 in real property improved by 1 to 4 dwelling units unless 1 or more



1 of the following applies:

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

6 (b) The interest secures an obligation incurred at a time when
7 the property was used or planned for use for agricultural,
8 commercial, industrial, or mineral-extraction purposes.

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

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

15 (3) This act does not apply to a receivership authorized by
16 law of this state other than this act in which the receiver is a
17 governmental unit or an individual acting in an official capacity
18 on behalf of the unit except to the extent provided by the other
19 law.

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

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

24 Sec. 5. (1) ~~The~~ **Except as provided in this act, the** procedure
25 for the selection, appointment, removal, and compensation of a
26 receiver, **or a professional engaged under section 15,** under this
27 act is as established by ~~rule of the supreme court.~~ **court rules.**

28 (2) The court that appoints a receiver under this act has
29 exclusive jurisdiction to direct the receiver and determine any



1 controversy related to the receivership or receivership property.

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

3 (a) Before judgment, to protect a party that demonstrates an
4 apparent right, title, or interest in ~~real~~-property that is the
5 subject of the action, under either of the following circumstances:

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

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

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

12 (i) To carry the judgment into effect.

13 (ii) To preserve nonexempt ~~real~~-property pending appeal or when
14 an execution has been returned unsatisfied and the owner refuses to
15 apply the property in satisfaction of the judgment.

16 (c) ~~In an action in which~~ **If** a receiver ~~for real property may~~
17 be appointed on equitable grounds.

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

21 (2) In connection with the foreclosure or other enforcement of
22 a ~~mortgage~~, **security agreement or lien**, the court may appoint a
23 receiver for the ~~mortgaged~~-property under any of the following
24 circumstances:

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

27 (b) The ~~mortgagor~~ **person that granted a lien in the property**
28 agreed in a signed record to appointment of a receiver on default.

29 (c) The owner agreed, after default and in a signed record, to



1 appointment of a receiver.

2 (d) The property ~~and any other collateral~~ held by the
3 ~~mortgagee~~ **are secured party is** not sufficient to satisfy the
4 secured obligation.

5 (e) The owner fails to turn over to the ~~mortgagee~~ **secured**
6 **party** proceeds or rents the ~~mortgagee~~ **secured party** was entitled to
7 collect.

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

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

18 Sec. 7. (1) ~~The court may not appoint a person as receiver~~
19 ~~unless the person submits to the court a statement under penalty of~~
20 ~~perjury that the person is not disqualified.~~ **If a court determines**
21 **there is good cause to appoint a receiver, the court shall select**
22 **the receiver in accordance with this section. A receiver selected**
23 **by the court must have sufficient competence, qualifications, and**
24 **experience to administer the receivership estate.**

25 (2) The party moving for the appointment of a receiver may
26 request, or the parties may stipulate to, the selection of a
27 receiver. The moving party shall describe how the nominated
28 receiver meets the requirements of this section.

29 (3) If the nonmoving party does not file an objection to the



1 moving party's nominated receiver within 14 days after the
2 complaint or motion is served, or if the parties stipulate to the
3 selection of the receiver, the court shall appoint the receiver
4 nominated by the party or parties, unless the court determines that
5 a different receiver should be appointed. All of the following
6 apply to an objection to a receiver:

7 (a) The party filing an objection to a nominated receiver
8 shall submit an alternative nominee for appointment as receiver and
9 serve the objection on all parties, as required by the court rules,
10 with a notice of hearing.

11 (b) If the court appoints a different receiver under this
12 section, within 14 days after the appointment, any party may file
13 an objection to the receiver and submit an alternative nominee for
14 appointment as receiver.

15 (c) An objecting party shall describe how the alternative
16 nominee meets the requirements for a receiver under this section.

17 (d) The court may, in its discretion, with or without motion
18 or notice, order the period for objection to a receiver reduced. If
19 the court exercises this discretion, the court shall identify and
20 show good cause for the reduction.

21 (4) If the court appoints a different receiver under
22 subsection (3), or if a party objects to a receiver and nominates a
23 new receiver under this section, the court or objecting party shall
24 state its rationale for selecting that particular receiver after
25 considering all of the following factors:

26 (a) The experience of the receiver in the operation or
27 liquidation of the type of assets to be administered.

28 (b) Relevant business, legal, or receivership knowledge of the
29 receiver.



1 (c) The receiver's ability to obtain the required bonding if
2 more than a nominal bond is required.

3 (d) Whether the receiver is disqualified under this section.

4 (e) Any other factors the court determines to be appropriate.

5 (5) ~~(2)~~ Except as otherwise provided in subsection ~~(3)~~, ~~(6)~~, a
6 person is disqualified from appointment as receiver if 1 or more of
7 the following apply:

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

9 (b) The person has an interest materially adverse to an
10 interest of a party.

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

14 (d) The person has a debtor-creditor relationship with a
15 party.

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

18 (6) ~~(3)~~ A person is not disqualified from appointment as
19 receiver solely because 1 or more of the following apply:

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

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

26 (c) The person maintains with a party a deposit account as
27 defined in section 9102 of the uniform commercial code, 1962 PA
28 174, MCL 440.9102.

29 ~~(4) A person seeking appointment of a receiver may nominate a~~



1 ~~person to serve as receiver, but the court is not bound by the~~
2 ~~nomination.~~

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

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

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

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

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

12 (2) The court may approve the posting by a receiver with the
13 court of alternative security, such as a letter of credit or
14 deposit of funds. The receiver may not use receivership property as
15 alternative security. Interest that accrues on deposited funds must
16 be paid to the receiver on the receiver's discharge.

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

20 (4) A claim against a receiver's bond or alternative security
21 must be made not later than ~~1-year~~ **90 days** after the date the
22 receiver is discharged.

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

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

29 (b) Subject to subsection (3), if the person has possession,



1 custody, or control of receivership property, turn the property
2 over to the receiver.

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

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

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

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

19 (a) Collect, control, manage, conserve, and protect
20 receivership property.

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

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

29 (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.

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



1 (g) Make a distribution of receivership property as provided
2 in section 20.

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

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

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

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

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

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

18 (4) The powers and duties of a receiver may be expanded,
19 modified, or limited by court order **on reasonable notice as**
20 **determined by the court.**

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

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

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

27 (c) Identify all records and other information relating to the
28 receivership property, including a password, authorization, or
29 other information needed to obtain or maintain access to or control



1 of the receivership property, and make available to the receiver
2 the records and information in the owner's possession, custody, or
3 control.

4 (d) Except as may be otherwise ordered by the court for cause,
5 within 7 days after the entry of the order appointing the receiver,
6 deliver to the receiver a list containing the name and address of
7 all creditors and other known interested parties of the
8 receivership estate.

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

13 (f) ~~(e)~~—Perform any duty imposed by court order, this act, or
14 law of this state other than this act.

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

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

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

23 (b) Sanction the failure as ~~civil~~ contempt.

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

28 (a) Obtain possession of, exercise control over, or enforce a
29 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~~**security agreement** by the person seeking
15 appointment of the 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.

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



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

3 (b) Sanction the violation as ~~civil~~ contempt.

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

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

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

11 (c) Any potential conflict of interest.

12 (d) The proposed compensation.

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

19 (2) ~~(3)~~ A receiver or professional engaged under subsection
20 (1) shall file with the court an itemized statement of the time
21 spent, work performed, and billing rate of each person that
22 performed the work and an itemized list of expenses. The receiver
23 shall pay the amount approved by the court.

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

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

29 (3) With court approval, **and after notice and an opportunity**



1 **for a hearing is given to all creditors and other known interested**
2 **parties unless the court orders otherwise for cause,** a receiver may
3 transfer receivership property other than in the ordinary course of
4 business by sale, lease, license, exchange, or other disposition.
5 Unless the agreement of sale provides otherwise, a sale under this
6 section is free and clear of a lien of the person that obtained
7 appointment of the receiver, any subordinate lien, and any right of
8 redemption but is subject to a senior lien.

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

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

22 (6) A reversal or modification of an order approving a
23 transfer under subsection (3) does not affect the validity of the
24 transfer to a person that acquired the property in good faith or
25 revive against the person any lien extinguished by the transfer,
26 whether the person knew before the transfer of the request for
27 reversal or modification, unless the court stayed the order before
28 the transfer.

29 Sec. 18. (1) A receiver is entitled to all defenses and



1 immunities provided by law of this state other than this act for an
2 act or omission within the scope of the receiver's appointment.

3 ~~(2) A receiver may be sued personally for an act or omission~~
4 ~~in administering receivership property only with approval of the~~
5 ~~court that appointed the receiver.~~ **Leave of the appointing court**
6 **must be obtained before the institution of any action or proceeding**
7 **against a receiver or a professional engaged by the receiver.**

8 Sec. 19. ~~A-Except as otherwise ordered by the court for cause,~~
9 ~~a receiver may file or, if ordered by the court, shall file an~~
10 **quarterly interim report-reports** that ~~includes-include~~ all of the
11 following:

12 (a) The activities of the receiver since appointment or a
13 previous report.

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

16 (c) Receipts and dispositions of receivership property.

17 (d) Fees and expenses of the receiver and, if not filed
18 separately, a request for approval of payment of the fees and
19 expenses.

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

21 Sec. 20. **(1) Within 7 days after the receipt by the receiver**
22 **of the list required under section 13(1) (d), the receiver shall**
23 **provide all creditors and any other known interested parties with**
24 **notice and a copy of any order governing its appointment.**
25 **Notwithstanding the foregoing, the court may delay, limit, or**
26 **eliminate the notice required by this subsection on finding that**
27 **cause exists for doing so.**

28 **(2) If the receiver concludes that receivership property is**
29 **likely to be sufficient to provide a distribution to creditors**



1 other than those holding a perfected lien on the property, the
 2 court shall order that the receiver give notice to all creditors
 3 and any other known interested parties that they need to submit
 4 claims under this section.

5 ~~(3) (1) Except as otherwise provided in subsection (6), a~~
 6 ~~receiver shall give notice of appointment of the receiver to~~
 7 ~~creditors of the owner~~ **When notice is given under subsection (1) or**
 8 **(2), it must be given** by both of the following:

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

12 (b) Publication as directed by the court.

13 ~~(4) (2) Except as otherwise provided in subsection (6),~~
 14 **directed by the court,** the notice required by subsection (1) must
 15 specify the date by which each creditor holding a claim against the
 16 owner that arose before appointment of the receiver must submit the
 17 claim to the receiver. The date specified must be at least 90 days
 18 after the later of notice under subsection ~~(1) (a)~~ **(3) (a)** or last
 19 publication under subsection ~~(1) (b)~~ **(3) (b)**. The court may extend
 20 the period for submitting the claim. Unless the court orders
 21 otherwise, a claim that is not submitted timely is not entitled to
 22 a distribution from the receivership.

23 ~~(5) (3) A claim submitted by a creditor under this section~~
 24 must satisfy all of the following requirements:

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

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

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

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



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

3 (6) ~~(4)~~—An assignment by a creditor of a claim against the
4 owner is effective against the receiver only if the assignee gives
5 timely notice of the assignment to the receiver in a signed record.

6 (7) ~~(5)~~—At any time before entry of an order approving a
7 receiver's final report, the receiver may file with the court an
8 objection to a claim of a creditor, stating the basis for the
9 objection. The court shall allow or disallow the claim according to
10 law of this state other than this act.

11 ~~(6) If the court concludes that receivership property is~~
12 ~~likely to be insufficient to satisfy claims of each creditor~~
13 ~~holding a perfected lien on the property, the court may order both~~
14 ~~of the following:~~

15 ~~(a) That the receiver need not give notice under subsection~~
16 ~~(1) of the appointment to all creditors of the owner, but only such~~
17 ~~creditors as the court directs.~~

18 ~~(b) That unsecured creditors need not submit claims under this~~
19 ~~section.~~

20 (8) ~~(7)~~—Subject to section 21, both of the following apply to
21 a distribution of receivership property:

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

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

29 Sec. 21. (1) The court may award a receiver from receivership



1 property the reasonable and necessary fees and expenses of
 2 performing the duties of the receiver and exercising the powers of
 3 the receiver.

4 (2) The court may order 1 or more of the following to pay the
 5 reasonable and necessary fees and expenses of the receivership,
 6 including reasonable attorney fees and costs **and any fees and**
 7 **expenses of professionals engaged under section 15:**

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

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

13 Sec. 25. A request by a ~~mortgagee~~**-secured party** for
 14 appointment of a receiver, the appointment of a receiver, or
 15 application by a ~~mortgagee~~**-secured party** of receivership property
 16 or proceeds to the secured obligation does not do any of the
 17 following:

18 (a) Make the ~~mortgagee~~**-secured party** a mortgagee in possession
 19 of the real property.

20 (b) **Impose any duty on the secured party under section 9207 of**
 21 **the uniform commercial code, 1962 PA 174, MCL 440.9207.**

22 (c) ~~(b)~~ Make the ~~mortgagee~~**-secured party** an agent of the
 23 owner.

24 (d) ~~(e)~~ Constitute an election of remedies that precludes a
 25 later action to enforce the secured obligation.

26 (e) ~~(d)~~ Make the secured obligation unenforceable.

27 (f) ~~(e)~~ Limit any right available to the ~~mortgagee~~**-secured**
 28 **party** with respect to the secured obligation.

29 (g) ~~(f)~~ Constitute an action within the meaning of section



1 3204(1) (b) of the revised judicature act of 1961, 1961 PA 236, MCL
2 600.3204.

