

RECEIVERSHIP ACT (EXCERPT)
Act 16 of 2018

554.1027 "Timeshare interest" defined; executory contract.

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

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

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

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

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

(4) A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (2) to adopt the contract.

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

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

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

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

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

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

(b) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

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

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

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

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

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

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

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

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

History: 2018, Act 16, Eff. May 7, 2018.